



UNITED STATES DEPARTMENT OF COMMERCE
National Institute of Standards and Technology
325 Broadway
Boulder, Colorado 80305-3328

MC361.05

18 March 2003

Greg Davis (SEPR-EP)
Small MS4 Storm Water NOI
EPA, Region 8
999 18th Street Suite 300
Denver, CO 80202-2466

RE: Notice of Intent for coverage under proposed small MS4 general permit for storm water discharges
at Department of Commerce Laboratories in Boulder, Colorado

Dear Mr. Davis,

Please accept this final Notice of Intent (NOI) for coverage under EPA's NPDES permit for storm water discharge at the Department of Commerce Laboratories, located at 325 Broadway Street, Boulder, CO 80305, to replace the draft NOI sent to you on March 6, 2003. Only language editing has been made to the draft for this final version; nothing substantial has been changed.

We are applying for coverage of the contiguous property at this address (which houses the National Institute of Standards and Technology [NIST], National Oceanic and Atmospheric Administration [NOAA], and National Telecommunications and Information Administration [NTIA]) as a single municipal separate storm sewer system (MS4). Although three agencies occupy the property, it is managed by NIST, and the storm water management plan and NPDES permit will be administered by NIST personnel.

Please issue the permit to the Department of Commerce Laboratories, 325 Broadway Street, MC 361.05, Boulder, CO 80305. The main operator phone number for NIST is (303) 497-3000.

The storm water management plan will be administered and coordinated by Sonja G. Ringen, Manager of Safety, Health and Environment in NIST. She may be reached at (303) 497-7389. At this time, no other entity is planned for use in satisfying one or more permit obligations. Should this situation change, due to reorganizations, fiscal restraints, or other factors, we will notify EPA with the identity of other entities responsible for portion(s) of the permit responsibilities.

The storm water management plan intended to minimize contaminants in storm water discharges from the Dept. of Commerce Boulder Laboratories is outlined in Attachment A to this letter. Descriptions, measurable goals and time frames for implementation are listed for each best management practice.

A map that shows the boundaries of the Department of Commerce Laboratories, including street names and property lines, is shown as Attachment B. The latitude of the approximate center of this property is 39° 59' 0" N and the longitude is 105° 15' 30" W.

A topographical map that delineates the area of land that drains onto the Dept. of Commerce (DOC) Laboratories in Boulder, CO is included at Attachment C. The approximate area that drains onto the site is about 1-1.25 square miles.

The western portion of the site is drained by Skunk Creek, a seasonally intermittent stream flowing across the site from southwest to northeast and exiting at the site's northern boundary with the Green Mountain Cemetery. Skunk Creek carries the majority of the upstream watershed onto site. It re-enters the site for a short distance at the King Street side before again exiting the site. Runoff on the eastern portion of the site originates in the Dartmouth Avenue cul-de-sac located just east of Skunk Creek. Runoff flows overland east to South Broadway and is captured by Anderson Ditch. However, because of limited ditch capacity and head gates regulating the ditch flow, runoff occasionally overflows to the east and reaches Broadway. Once water reaches Broadway, it enters the City of Boulder's stormwater sewer system. Most of this water is discharged to South Boulder Creek. Anderson Ditch is approximately 5 feet wide with nearly vertical sidewalls. The major shareholders are the New Anderson Ditch Company, the CU, and Baseline Water Storage, with several smaller shareholders, including NIST, the City of Boulder, and individual homeowners. The ditch extends to South Boulder Creek at Table Mesa Drive and Broadway where the water is redirected to a gateway and ditch extension into Baseline Reservoir.

The USFWS has evaluated and reported on federally listed endangered, threatened, and candidate plant and animal species which could be present or utilize the site (USFWS, February 11, 1992, April 13, 1992, May 22, 1992, and August 20, 1992). The peregrine falcon (Falco peregrinus) was a listed endangered species until recently. While there are no suitable nesting sites with the DOC campus site boundaries, nesting pairs have been reported on the cliffs of the Flatirons, within five miles of the site. The Preble's meadow jumping mouse is known to exist in Boulder County but no documented sightings have been made on the DOC campus. Historic sightings and habitat potential are present for several species (the bald eagle, the Ute Ladies' Tresses Orchid, and the Black-footed ferret), but no actual sightings can be documented. Therefore, it is felt that there is no current danger to listed species from storm water discharges on site. However, the storm water management plan will help to limit any potential danger in the future.

DOC campus managers have experience with large scale construction (construction of the David Skaggs Building) and compliance with federal regulations related to biological resources, socioeconomic/land use, cultural resources, historic resources sights, and wetlands. A copy of the environmental impact statement written for that construction (May 1993) is available for review by EPA for the purpose of storm water management permitting.

Copies of Memorandums of Agreement with the City of Boulder and with Fourteen Native American Tribes which outline steps that have already been taken to protect natural and cultural resources to the tribes are the final attachments to this application, shown as Attachment D. The Tribes now hold a permanent, irrevocable easement on the property to protect against future development, and specific areas are designated to remain undisturbed.

For any questions regarding this NOI, technical information regarding watershed areas, or storm water management plan details, please contact Sonja Ringen at (303) 497-7389.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is,

to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations (Clean Water Act (3 U.S.C. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*))

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen S. Salber". The signature is fluid and cursive, with the first name "Stephen" and last name "Salber" being more legible than the middle initial "S".

Stephen S. Salber, Chief
Engineering, Maintenance, Safety and Support Division
Senior Facilities Manager

Attachments: 4

Cc: Sonja Ringen, Manager, Safety, Health and Environment
Rosamond Rutledge-Burns, Chief, Occupational Health and Safety Division
Mark George, MASC, Environmental Coordinator

DEPARTMENT OF COMMERCE BOULDER LABORATORIES STORM WATER MANAGEMENT CONTROL MEASURES

Public Education and Outreach on Storm Water Impacts

The regulations require the implementation of a public education program to distribute educational materials to the community, with suggestions on the steps that the public can take to reduce pollutants in storm water runoff.

I. Best Management Practice (BMP): Distribute information developed by City of Boulder Storm Water Quality Office to all employees at Department of Commerce Boulder Laboratories.

Measureable goal: Information developed by City of Boulder Storm Water Quality Office will be distributed to all NIST, NOAA, and NTIA employees.

Time frame: Different information will be distributed to employees annually, starting in the fall of 2003. A follow-up survey will determine how many employees read the fliers and how many employees initiated behavioral changes based on the information received.

Justification: Employees at the Dept. of Commerce Boulder Laboratories are typically environmentally-friendly and welcome suggestions to make improvements to their personal lives that will improve the environment.

II. BMP: Distribute information related specifically to automobile fluid leaks and the impact on water pollution from antifreeze and motor oil leaks to all employees at DOC Boulder Laboratories.

Measureable goal: Developed information will be distributed to all NIST, NOAA, and NTIA employees.

Time frame: Within 1 year of permit award.

Justification: Automobile fluid leaks probably are the most prevalent form of storm water contamination at the DOC Boulder Laboratories site. Anywhere from 100-1000 cars could be present in parking lots during the work week. Rain or snow washes parking lot surface contaminants into the storm sewers. Asking the cooperation of all employees who park on campus will reduce the total contaminant load into the storm sewers.

Public Participation and Involvement

EPA recommends that the public be included in developing, implementing, and reviewing the storm water management program. Due to security concerns, the DOC Boulder Laboratories is restricted at inviting the general public to participate physically in projects related to storm water management. However, the DOC Boulder Laboratories has consistently worked with the City of Boulder and public groups regarding open spaces, and impact of construction on the neighborhood and the City. This is demonstrated through the development of the environmental impact statement written when the David Skaggs Building was constructed in 1993-1995.

However, employees of the DOC Boulder Laboratories will be invited to participate through volunteer activities on site.

I. BMP: Initiate a site and stream cleanup for Skunk Creek and Anderson Ditch activity for volunteers.

Measureable goal: Stream Cleanup day held with volunteers. Trash and hazardous waste collection points to be established.

Time frame: Within 2 years of permit award.

Justification: Physical participation on the part of employees will create a cooperative environment that employees can "own".

Illicit Discharge Detection and Elimination

DOC Boulder Laboratories has already identified potential non-storm water discharge locations and has either closed off the location or monitors the locations for only legal discharges. However, the program is not formal or documented.

I. BMP: Formalize a program for illicit discharge detection.

Measurable goal: Develop a written set of guidelines and checklists, with deadlines and schedules, for monitoring potential illicit discharge locations.

Time frame: Developed within 2 years of permit award.

Justification: Documentation for procedures and schedules will assure regulatory agencies, and program administrators that inspections are being performed, and illicit discharges minimized.

II. BMP: Stencil curbs above storm water discharge points with warnings to prohibit illicit discharges to that location.

Measurable goal: Stenciling of letters on curbs above storm water discharge points on streets.

Time frame: Before October 2003.

Justification: Warning labels are a visual reminder of training and education to minimize illicit discharges.

Construction Site Runoff Control

DOC Boulder Laboratories must develop, implement, and enforce a program to reduce pollutants in any storm water runoff from construction activities that result in a land disturbance of greater than or equal to one acre. An organizational structure already exists to implement a program for reduction of pollutants to storm water runoff. Most construction activities (certainly all construction activities of the size regulated in this permit) are designed and built by contractors. Standard language must be placed in all contracts that require proper design and consideration for storm water runoff control in construction activities.

I. BMP: Create standard language that requires proper design and runoff control in all construction projects.

Measurable goal: Standard language included in boilerplate of all contract documents for construction activities.

Time frame: Before September 2003.

Justification: Since contractors run construction activities for the Dept. of Commerce, storm water management for construction sites must be controlled through contract language.

II. BMP: Train design engineers and project managers in requirements of Storm Water Discharge Permit, language of contracts with requirements for construction runoff control, and their duties as contracting officer's representatives for enforcement of contract requirements related to construction runoff control.

Measurable goal: Documentation of training for design engineers and project managers.

Time frame: August 2003.

Justification: The design engineers and project managers are the representatives of the government who will enforce contract language designed to minimize or prohibit construction storm water runoff. Therefore, they will need to be educated in what they will be enforcing.

Post-Construction Runoff Control

DOC Boulder Laboratories must implement and enforce a post-construction storm water management plan for new construction and redevelopment areas. Historically, storm water engineering solutions have been applied to new construction, but a formal, documented process must be developed.

I. BMP: Develop a written preventative maintenance plan to apply to constructed storm water runoff devices.

Measureable goal: Written plan.

Time frame: Because the runoff control devices or landscaping will be dependant on each construction project, the time frame can only be placed at the conclusion of each construction project.

Justification: Having a written plan and schedule will be useful for checking on accountability when it comes to monitoring post construction runoff control.

Pollution Prevention/Runoff Control

DOC Boulder Laboratories has already instituted a Pollution Prevention program for all agencies on site. This includes a recycling program, successful hazardous waste minimization program, used oil recycling program, antifreeze recycling program, battery recycling program, fluorescent light recycling program, ballast recycling program, metal recycling program, and electronic waste recycling program. DOC Boulder Laboratories can however, educate hazardous waste generators about the concepts of pollution prevention at home and at work, and promote pollution prevention in coordination with the County of Boulder for households.

I. BMP: Include pollution prevention in hazardous waste generator training.

Measureable goal: Documented training.

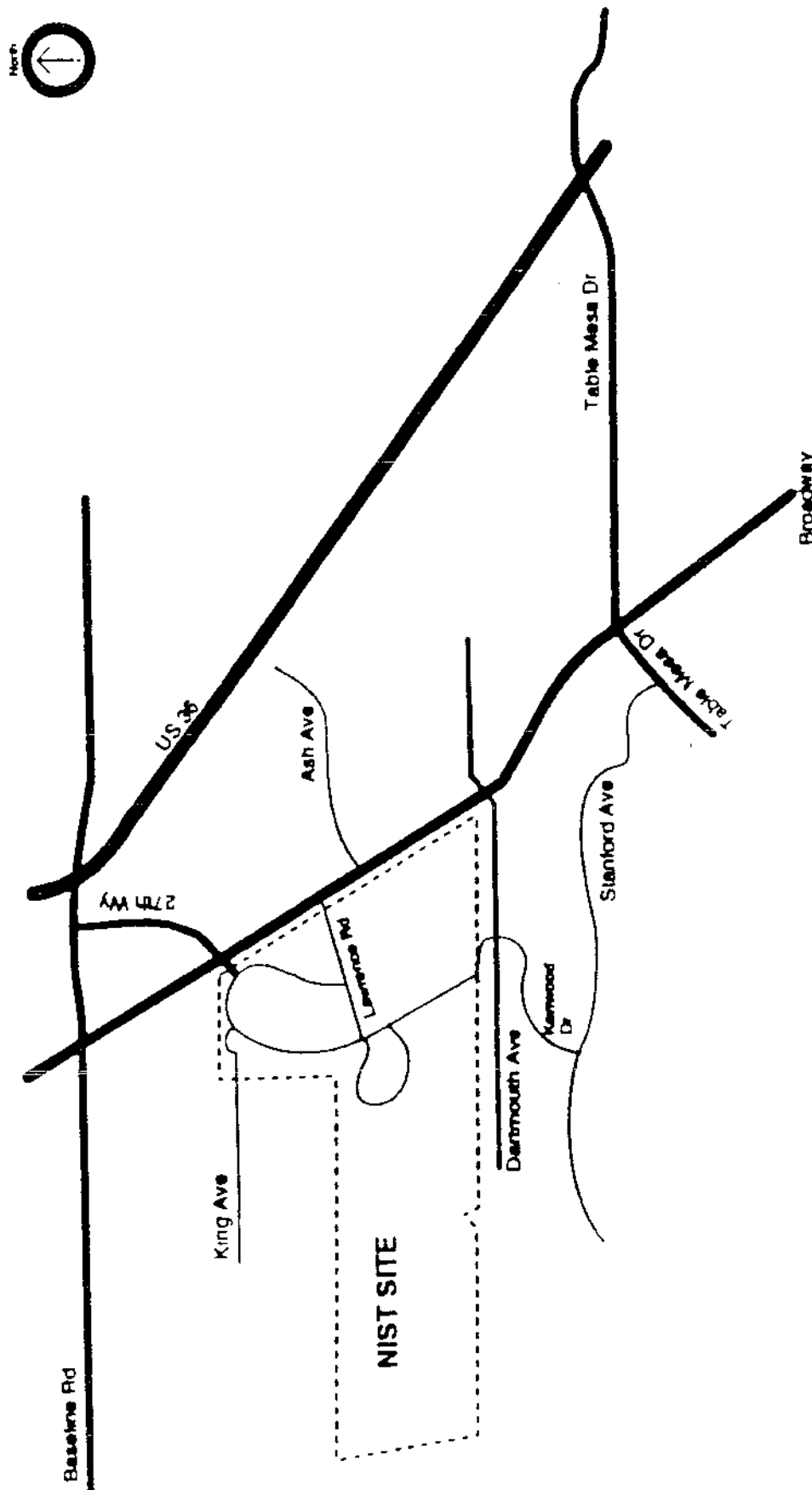
Time frame: Hazardous waste generators trained before the end of May, 2003. Annual refresher training for all generators.

Justification: Training provides the reinforcement of the best techniques for improving the environment, i.e. not creating the pollution at all.

II. BMP: Coordinate with the County of Boulder to provide a household hazardous waste collection for employees of the DOC Boulder Laboratories.

Measurable goal: A Household Hazardous Waste Day event.

Justification: A work-sponsored activity that promotes environmental compliance at home helps promote the idea that environmental improvement is everyone's job.



SOURCE: Ballofet & Associates



JOINT GSA/NIST EIS

U.S. GENERAL SERVICES ADMINISTRATION

SITE VICINITY MAP

EXHIBIT II-6

COPY

MEMORANDUM OF AGREEMENT

BETWEEN

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY,

U.S. DEPARTMENT OF COMMERCE

AND

THE CITY OF BOULDER, COLORADO

This Memorandum of Agreement ("agreement"), made and entered into this 8th day of December, 1993, by and between the United States Department of Commerce, National Institute of Standards and Technology, an executive agency of the United States of America ("NIST") and the City of Boulder, Colorado, a Colorado home rule city ("City"),

WITNESSETH:

WHEREAS, NIST is the custodian of federal property located at 325 Broadway, Boulder, Colorado, described in Exhibit A, attached hereto and incorporated herein by this reference (the "property");

WHEREAS, NIST and the U.S. General Services Administration ("GSA") plan to construct additional facilities on the property, in particular a building planned for the National Oceanic and Atmospheric Administration ("NOAA"); and

WHEREAS, the City possesses legitimate interests in the scope of development of the property and in preserving part of the undeveloped space now in existence on the property, as well as providing continuing public access for the aesthetic, scenic, and environmental enjoyment of part of the present undeveloped space; and

WHEREAS, NIST recognizes these interests and desires to fully accommodate those interests in view of its present and future Federal research needs; and

WHEREAS, the parties have entered into an irrevocable easement of even date concerning the present undeveloped space on the property; and

WHEREAS, the parties intend that certain pedestrian and bicycle paths be constructed and maintained by the City; and

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WHEREAS, NIST possesses the authority to enter into this agreement pursuant to 15 U.S.C. §§ 278e and 1512 and Title IV of Public Law 102-393 (October 6, 1992), 106 Stat. 1745; and the City possesses such authority pursuant to Article XX, Section 6 of the Constitution of the State of Colorado and Sections 64, 84, and 176 of the Charter of the City;

THEREFORE, for good and valuable consideration, the parties enter into the following agreement in an effort to strike a balance between those Federal research needs and those community interests as follows:

Zones of Consideration

(1) Definitions of Zones. The Parties agree to consider the Property as administratively divided into 3 zones: (a) the development zone - where all building will take place, within total discretion of the Director, NIST, (and GSA regarding the NOAA Building), subject only to Federal statutes and regulations and the limitations set forth in this agreement; (b) the research zones - three primary and one secondary where research projects may be performed and certain research facilities may be located; and (c) the protected area - where a buffer zone will be designated and the City will spend its money to construct underpasses and pedestrian and bicycle paths for public use. These zones are defined on Exhibit A. The restrictions on the secondary research zone and the protected area are set forth in the easement referred to above. The terms of this agreement are not intended to limit the GSA unless the GSA agrees to be bound thereby. The terms of this agreement are not intended to limit the Department of Commerce with regard to the transfer of land to the GSA for the NOAA building authorized by Section 13 of Public Law 101-136 (Nov. 3, 1989), 103 Stat. 804.

The Development Zone

(2) General Description of Development Zone. As detailed on Exhibit A, the development zone will generally be bounded by the following undeveloped lands: on the south of the property, an area generally 400 feet wide, lying between Dartmouth and the irregular boundary formed by Research Zone 3, Building 25, and the loop road to be constructed (as described below); on the east of the property, an area approximately 600 feet wide, lying between Broadway and the same loop road described below; and on the west of the property, the area west of the loop road described below, constituting the Enchanted Mesa. The Skunk Creek Corridor, as defined by the U.S. Fish and Wildlife Service, will also be excluded from the development zone. The loop road will be in the following general location: on the south and east as close to Anderson Ditch as possible; connecting with the Broadway access; and around the south end of the NOAA building as close to the building as possible (giving reasonable consideration to noise and vibrations), maintaining the general 400-foot buffer in all areas except the south end of the NOAA building.

(3) Development Limits. Within the development zone, all building will take place, within the total discretion of the Director, NIST (and GSA regarding the NOAA building), subject only to the limitations set forth in this agreement.

(4) Height Limits. Within the development zone, NIST agrees not to construct any new buildings (a) which exceed 55' in height, as measured under Section 84 of the Boulder City Charter, or (b) which would impair an individual standing on Broadway from viewing the top one-third of Enchanted Mesa, as set forth in Exhibit B, attached hereto and incorporated herein by this reference. NIST may exceed the line-of-sight limitations set forth in (b) above only for programmatic scientific needs (defined in paragraph 39 below). If NIST envisions any future building which must exceed the line-of-sight limitations, the Director, NIST, shall communicate such information to individuals from diverse community groups (such as the Boulder Chamber of Commerce, the University of Colorado, the City, and local citizens). NIST agrees to allow these individuals a reasonable time to study the proposal and to provide their individual views. The parties agree that, subject to this agreement, after consideration of the views of these individuals, final decision-making authority over construction rests with the Director, NIST.

(5) Forest Service Excluded. NIST shall not allow the United States Forest Service to occupy any portion of the development zone at any time for non-research purposes.

(6) Building Codes. All buildings in the development zone shall comply with national and local building codes. Although no inspection fees will be paid and the Federal government will contract with and utilize the services of independent inspectors, City inspectors will work with the independent inspectors as construction proceeds and advise the inspectors about compliance issues.

(7) Use of Development Zone. It is the intent of this agreement that the development zone be used solely by the Federal government and solely for scientific research activities and necessary activities in support of those research activities, such as secretarial and clerical activities. However, the parties recognize that in the event that any building or a part of a building in the development zone becomes vacant, and the Federal government is unable to find a Federal agency which would devote such building to a scientific research purpose, the Federal government may have to make such building available on a temporary basis to another entity or for another purpose.

The Research Zones

(8) Definitions of Research Zones. As described on Exhibit A, there shall be three separate primary research zones and one secondary research zone.

(9) Use of Primary Research Zones. Within the primary research zones, research projects may be conducted wholly within the discretion of the Director, NIST, subject only

to the limitations set forth in this agreement. Within the primary research zones, the parties agree that existing buildings may be redeveloped to similar size, height and use. No other habitable buildings are permitted in the primary research zones.

(10) Use of Secondary Research Zone. Within the secondary research zone, research activities may only be performed under the process set forth in the easement of even date.

The Protected Area

(11) Definition of Protected Area. The legal description of the protected area shall be that contained in the easement of even date.

(12) Use of Protected Area. Within the protected area, the parties agree that research is undesirable and shall not be performed, except in the secondary research zone under the process set forth in the easement of even date. The riparian area of land known as the Skunk Creek Corridor shall be included in the protected area. The size and location of the Skunk Creek Corridor set forth on Exhibit A has been determined by the U.S. Fish and Wildlife Service, and both parties accept such determination as conclusive.

(13) Paving Kusch Road. The currently unpaved road in the protected area known as Kusch Road shall not be improved or paved unless such action is required for environmental or operational reasons. Upon a finding by the Director, NIST, that improvements to the road or paving the road is required for one of such reasons, the Director, NIST, will communicate the finding and the basis therefor to the City.

(14) Fencing. NIST agrees that it shall not erect any new perimeter fencing around the protected area, unless prior written agreement is reached with the City concerning such construction.

(15) Utility and Communications Lines. Both parties agree and anticipate that, in order to properly conduct research in the primary or secondary research zones, NIST and any other agency may place new permanent utility and communications lines under the protected area. Before any placement of utility lines begins, NIST agrees to provide prior notice to the City that programmatic scientific needs (defined in paragraph 39 below) necessitate the placement of a particular utility or communications line under the protected area. Both parties agree to accommodate each other's interests to the maximum extent possible in placing these lines and restoring and revegetating the land after construction. In addition, both parties agree to accommodate reasonable use of the land in the protected area immediately adjacent to the development zone as necessary for berming and other landscaping required during construction of the NOAA building and any other building or road on the development zone.

(16) Mineral Rights. As also described in the above-mentioned easement, both parties agree that, in accordance with Federal law, NIST retains all mineral rights to the property.

(17) Easement. In addition to the above restrictions on use of property within the protected area, the parties agree that future use of this area will be governed by the separate, irrevocable easement of even date entered into between the parties.

Agreement on Future Construction

(18) Site Buildout. The parties accept the present location of the NOAA building, as shown in Exhibit A, which will be constructed and maintained by GSA. The parties agree that the property will have a maximum incremental build-out of 697,000 gross square feet of space, which would bring the total buildout of the property to 1,187,270 gross square feet.

(19) Loop Road Construction. NIST agrees to take all reasonable steps to ensure that the loop road construction is completed before construction on the NOAA building begins.

Traffic Management

(20) Parking at the Property. The parties agree that appropriate design techniques shall be employed in the landscaping of the NOAA building so that the parking areas will not appear to be a "sea of asphalt." The design shall generally break up the mass of parking and require parking to appear to be a part of the natural landscape. The NOAA building parking lot shall contain 600 spaces, with an additional contingency of 325 spaces held in reserve. The total number of marked parking spaces on the property shall not exceed 1477 spaces, plus the additional 325 space contingency. The parties recognize that the number of spaces could temporarily be higher because of the parking lot building and demolition sequence. Such period shall not exceed that set forth on the building schedule without prior written agreement of the parties. Upon the request of either party, both parties agree to meet and confer in order to resolve any issues concerning the need for or the use of the contingency parking spaces. The parties shall, to the extent possible, cooperate in order to facilitate reasonable alternative modes of travel in preference to building out the contingency parking. In building out the entire NIST campus, reasonable consideration shall be given to increasing utilization of alternative modes and existing parking prior to building additional parking.

(21) Buffers, Berms, and Landscaping. The parties recognize that the use of berms and quality landscaping enhance the appearance of the property and minimize or mitigate the environmental impact of the development of the property, and therefore agree to work with GSA to employ such techniques toward that end. Particular attention shall be paid to the use of berms and buffers to separate the loop road from the protected area. The loop road and the parking lots shall be shielded by berms and trees from the east and south. The

berms adjacent to the loop road and the parking lots shall be landscaped. The objective shall be to conceal the loop road and the parking lots from the exterior of the site, as much as possible.

(22) Traffic Impact Study. The second access to the site shall be located three hundred feet north of Ash Street. The parties shall study the need for and feasibility of signalization of such access and shall bargain in good faith to seek consensus concerning signalization.

(23) Trip Reduction Planning. NIST agrees to continue to implement management initiatives to improve or reduce traffic flow around the property, such as flex time, day care, on-site cafeteria, bicycle shelters, travel demand management, shuttles, van pools, and bus passes for employees. NIST further agrees to develop a "trip reduction plan" which will build upon these current initiatives.

(24) Pedestrian and Bicycle Paths. The City shall construct and maintain pedestrian and bicycle paths allowing the public to travel along Broadway and to gain access to the protected area and shall construct two underpasses for the existing Broadway pedestrian and bicycle path under 27th Street and the new access road north of Ash Street. The City shall pay for the construction of such pedestrian and bicycle paths and underpasses, in an amount not to exceed \$420,000.00. The City is hereby granted all necessary easements to gain access to the property for the construction and maintenance of the pedestrian and bicycle paths and underpasses. The pedestrian and bicycle paths shall be located entirely on the protected area, except for the area in front of the existing NIST building, at approximately 27th Street, where the path shall go through an easement, which is hereby granted, and attached hereto and incorporated herein by this reference as Exhibit C. The City shall be responsible for the maintenance of all pedestrian and bicycle paths and underpasses constructed by the City.

Utilities

(25) Water and Wastewater Master Plans. The City shall update its master plans for the water and wastewater utilities, in tandem with the development of the master plan for the NIST development in the development zone. All subsequent construction on the property shall be in conformance with the NIST master plan. Prior to any development on the development zone beyond the NOAA building, NIST shall complete all improvements on the property necessary to serve all water and wastewater needs of that development identified in the NIST master plan.

(26) Drainage Facilities. The parties agree that the presently planned approximate size and location of a detention pond (in the southern-most corner of the property) is acceptable. In the event that another detention pond is determined by the Director, NIST, to be necessary, NIST shall notify the City of this determination, and the parties agree to determine its precise location. The necessity for such a detention pond is not a matter of

negotiation, only its location (which may be within the approximately 600 foot buffer along Broadway). Both detention ponds shall be landscaped and maintained so as to maintain, to the maximum extent feasible, the natural, open-space conditions of the protected area. The City shall assume no ownership or control over such drainage facilities, and NIST shall be fully responsible for the construction and maintenance of such facilities.

(27) Water and Wastewater Lines. Any existing City water transmission and distribution lines and wastewater collection lines on the property may be operated, maintained, and reconstructed by the City. NIST shall dedicate additional easements as required from time to time for water and wastewater service to the NOAA building and for the buildout of the NIST site.

Environmental Considerations

(28) Noise. The parties agree that consideration shall be given to all practicable measures limiting the effects of noise caused by the operations of NIST's future facilities and equipment. As an example, both parties agree that the current design of the NOAA building, which places most of the machinery within the building (keeping outside only that machinery and equipment which must remain on the outside) is acceptable.

(29) Hazardous Waste. The parties agree that hazardous waste shall be treated in accordance with all Federal laws and the best current practices as of the time of disposal.

(30) Outside Lighting. The City agrees to work with GSA to reach agreement regarding outside lighting on that part of the property related to the NOAA building construction. NIST shall notify the City prior to installing any new outside lighting on the NIST-managed portions of the property. No lighting shall be installed on top of Enchanted Mesa, except as needed for safety of air traffic, as required by the Federal Aviation Administration, or because the lighting itself is part of the research project.

Future Construction Considerations

(31) Community Communication. NIST agrees to develop an on-going process for communicating construction issues to the City during any pre-construction, construction and post-construction phase of development on the property. Such communication may take the form of press releases and newsletters distributed throughout the neighboring community. Whenever NIST issues some communication to the public, it agrees to provide a copy of such communication to the City Manager for distribution as the City Manager sees fit. The parties recognize that such communication ensures sensitivity to citizen issues. When appropriate, the parties agree to raise these issues on a timely basis, preferably in the quarterly implementation committee meetings, as discussed in paragraph 42, below.

(32) Review and Comment. Whenever NIST begins any building of over 10,000 square feet of gross floor area in the development zone or any replacement building in the

research zones, it shall afford the City a 30-day review and comment period. This shall include all issues, such as: landscaping, outside lighting, hazardous waste, noise, parking lots, fire protection, water conservation, energy efficiency, solid waste removal, building materials and design, water, wastewater and drainage infrastructure, underdrains, wetlands and wildlife management, limitation of emissions, and integrated pest management. Although there is a time limit of thirty days, consistent with Federal law, NIST agrees to accommodate, if possible, comments beyond the thirty day time period. The City will designate one person who will manage its review process.

(33) NEPA Compliance. In accordance with NIST's obligations under the National Environmental Policy Act, NIST shall perform an environmental impact statement on its master plan for the property (which shall be done at approximately the same time as the pending GSA environmental impact statement for the NOAA Building). The environmental impact statement for the master plan may mitigate the impact of the site plans but may not be used to increase any of the maximum build-out numbers set forth in this agreement. The parties recognize that mitigation undertaken in response to the NIST environmental impact statement or to the GSA environmental impact statement for the NOAA Building may affect the construction and location of buildings on the site and may decrease but not increase building envelopes, loop road incursions into open space and other environmental impacts contemplated by this agreement. If a change occurs as a result of such mitigation, the parties agree to incorporate such changes in this agreement and in the easement of even date.

(34) Reservation of Rights. The parties recognize and respect each other's right to take any legal action regarding the environmental aspects of any future development. Should litigation result during the course of this agreement, both parties recognize that said litigation could be grounds for modification or cancellation of this agreement in accordance with the terms of this agreement outlined in paragraphs 47 and 48, below.

(35) Removal of Excess Structures and Equipment. NIST, in consultation with other Federal agencies, agrees to remove any equipment or structures on the property which are deemed by NIST to be excess personal property, as defined by current Federal Property Management Regulation, 41 C.F.R. § 101-43.001-6 (i.e., not required for its needs and the discharge of its responsibilities). The City understands that, in disposing of excess Federal property, NIST must follow all Federal property regulations, currently contained at Subchapter H, Federal Property Management Regulations (41 C.F.R. Parts 101-43 to 101-49).

research zones, it shall afford the City a 30-day review and comment period. This shall include all issues, such as: landscaping, outside lighting, hazardous waste, noise, parking lots, fire protection, water conservation, energy efficiency, solid waste removal, building materials and design, water, wastewater and drainage infrastructure, underdrains, wetlands and wildlife management, limitation of emissions, and integrated past management. Although there is a time limit of thirty days, consistent with Federal law, NIST agrees to accommodate, if possible, comments beyond the thirty day time period. The City will designate one person who will manage its review process.

(33) NEPA Compliance. In accordance with NIST's obligations under the National Environmental Policy Act, NIST shall perform an environmental impact statement on its master plan for the property (which shall be done at approximately the same time as the pending GSA environmental impact statement for the NOAA Building). The environmental impact statement for the master plan may mitigate the impact of the site plans but may not be used to increase any of the maximum build-out numbers set forth in this agreement. The parties recognize that mitigation undertaken in response to the NIST environmental impact statement or to the GSA environmental impact statement for the NOAA Building may affect the construction and location of buildings on the site and may decrease but not increase building envelopes, loop road incursions into open space and other environmental impacts contemplated by this agreement. If a change occurs as a result of such mitigation, the parties agree to incorporate such changes in this agreement and in the easement of even date.

(34) Reservation of Rights. The parties recognize and respect each other's right to take any legal action regarding the environmental aspects of any future development. Should litigation result during the course of this agreement, both parties recognize that said litigation could be grounds for modification or cancellation of this agreement in accordance with the terms of this agreement outlined in paragraphs 47 and 48, below.

(35) Removal of Excess Structures and Equipment. NIST, in consultation with other Federal agencies, agrees to remove any equipment or structures on the property which are deemed by NIST to be excess personal property, as defined by current Federal Property Management Regulation, 41 C.F.R. § 101-43.001-6 (i.e., not required for its needs and the discharge of its responsibilities). The City understands that, in disposing of excess Federal property, NIST must follow all Federal property regulations, currently contained at Subchapter H, Federal Property Management Regulations (41 C.F.R. Parts 101-43 to 101-49).

City Support

(36) Explanation and Education by City. The City agrees to explain this agreement, and its overall benefits, to the community of Boulder. It will educate neighborhood groups on the terms of this agreement and the policies behind such terms. The City will continue to support and be appreciative of the scientific work force at the Federal site. If litigation results from the development activities on the property, the City agrees to live up to this, and any other, agreement it has made with the Federal agencies involved.

Terms and Conditions

(37) Intent Concerning Use of Site. Both parties agree that this agreement is predicated on the representation by NIST that the present and future build-out of the property will be utilized for Federal purposes with the intent of conducting research and support operations.

(38) Definition of Temporary. As used in this agreement, the term "temporary" shall have a meaning of "not permanent." Because the duration of research projects may vary from time to time, whenever the Director, NIST, must communicate to the City that a project will be of a "temporary" nature, the Director shall inform the City of the approximate start and finish dates of the project. The project shall not exceed the finish date without an explanation to the City of the reason and communication of a new finish date.

(39) Definition of Programmatic Scientific Needs. Any determination of NIST's "programmatic scientific needs" by the Director, NIST, shall be based on specific analysis by NIST project managers and consistent with the stated mission and legal authorities of NIST. For purposes of this agreement, these needs include the needs of NOAA, the National Telecommunications and Information Administration, and any other Federal agencies on the site. Upon determination of a need, the Director, NIST, shall exercise reasonable diligence in seeking out alternatives that would have a less intrusive impact on the surrounding community, including reviewing all of the available sites, determining that no other practical solution exists, and minimizing impact on the surrounding community.

(40) Definition of Landscaping. As used in this agreement, any requirement for "landscaping" shall be in accordance with the techniques and requirements as defined by GSA guidance, currently Chapter 2 ("Site Planning/Landscaping Design") of PBS-P3430.1A.

(41) No Conflict with Regulations or Ordinances. Nothing in this agreement conflicts with present NIST regulations or City ordinances.

(42) Implementation Committee. The parties agree to form a joint committee, which shall meet on a quarterly basis, to monitor the implementation of this agreement and the easement of even date. This committee will be composed of the City Manager, the Director, NIST, and the Director, Field Installations Consolidation Project Office (NOAA), or their representatives.

(43) Dispute Resolution Process. Should disagreement arise as to the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved by the parties' representatives, the areas of disagreement shall be reduced to writing by each party and presented to the other party for consideration at least 30 days prior to forwarding the matter to respective higher officials for appropriate resolution.

(44) Enforcement. This agreement imposes no duty or obligation to any third party. No person or entity not a signatory party to this agreement shall have any right to enforce its terms. Both parties shall have the right to enforce this agreement by proceedings at law or in equity. No party shall be deemed to waive or forfeit any right under this agreement by its forbearance from enforcing such right in the past.

(45) Integration Clause. This agreement and the attached exhibits plus the easement of even date contains the entire agreement between the parties relating to the property and may be modified only by an instrument in writing executed by both of the parties.

(46) Effective Date. The terms of this agreement will become effective upon the signature of the approving officials of both of the parties.

(47) Good Faith Negotiations. In the event that either party feels unreasonably constrained by the terms of this agreement at any time, the other party shall bargain in good faith to explore any adjustment of the terms of this agreement which could relieve such constraint, consistent with the spirit of this agreement and the public interest. It is understood that any modification or cancellation of this agreement will in no way affect the right and obligations of the parties as described in the easement of even date regarding the protected area.

(48) Termination. This agreement shall remain in effect unless sooner modified by the mutual consent of the parties, or canceled in accordance with the conditions described hereinafter. This agreement may be canceled either upon mutual agreement or by either party upon providing 90 days written Notice of Cancellation to the other party. Such Notice of Cancellation may be provided only under one or more of the following circumstances:

(a) where either party is directed by law or executive order of the President of the United States to cancel this agreement;

(b) the occurrence of such other circumstances which may later, by mutual recognition of the parties, act so as to render compliance with this agreement impossible;

(c) in the event that the City files suit against any Federal agency alleging non-compliance with the National Environmental Policy Act regarding the NOAA building.

Upon such Notice of Cancellation, each party promises to negotiate in good faith towards an amiable settlement of the rights of the parties with the utmost consideration given to the public enjoyment of the scenic, aesthetic, and environmental assets of the property.

(49) Change in Custodianship. If at any time custodianship of any part of the property is transferred from NIST to another Federal agency, NIST will insist that any new custodian of the property enter into the same agreement with the City. This provision will not be in effect for the parcel of property to be transferred to GSA to construct the NOAA building, unless GSA otherwise agrees.

(50) Liaison Officers. Until changed by notice given under paragraph 50, the following persons shall serve as liaisons under this agreement. 51

For NIST: Dr. R.A. Kamper, Director, NIST Boulder Laboratories
(303-497-3237).

For NOAA: Mr. Klaus Liedtke, Director, Field Installations Consolidation Project Office
(303-497-5010).

For the City: Mr. Tim Honey, City Manager, Post Office Box 791, Boulder, Colorado 80306
(303-441-3090).

(51) Notices. All notices under this agreement shall be given by registered or certified mail, postage prepaid, directed as follows, or as amended by notice given under this paragraph, and shall be deemed given on the date of mailing:

A. Intended for NIST:

Director, NIST Boulder Laboratories
325 Broadway
Boulder, Colorado 80303

B. Intended for NOAA:

Director, Field Installation Consolidation Project Office
325 Broadway OAX4
Boulder, Colorado 80303

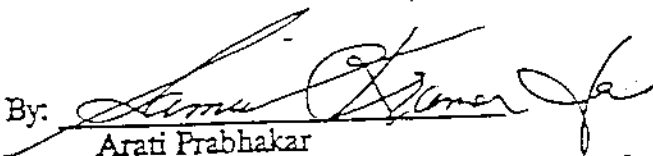
C. Intended for the City:

City Manager
Post Office Box 791
Boulder, Colorado 80306

Acceptance and Approval


IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed as of the day and year first above written.

U.S. Department of Commerce

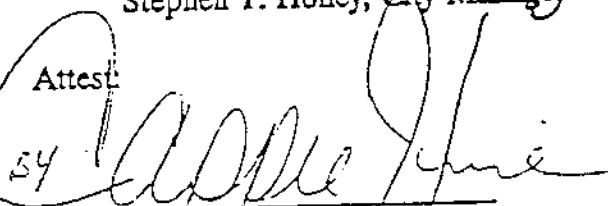
By: 
Arati Prabhakar
Director, National Institute of Standards and Technology

Date: 8 December 1993


The City of Boulder, Colorado

By: 
Stephen T. Honey, City Manager

Attest:

54 
Director of Finance and Record
Ex-Officio City Clerk

Approved as to form:

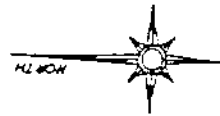

City Attorney

Date: 11/15/93

PL CU a-moa2FRK

D.O.C. - N.I.S.T. PROPERTY AT 325 BROADWAY
IN SECTIONS 5 AND 6, T. 1 S., R. 70 W., 6TH P.M.
CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO
TOTAL AREA = 205.66 ACRES

M. O. A. - EXHIBIT "A"
SHEET 1 OF 2

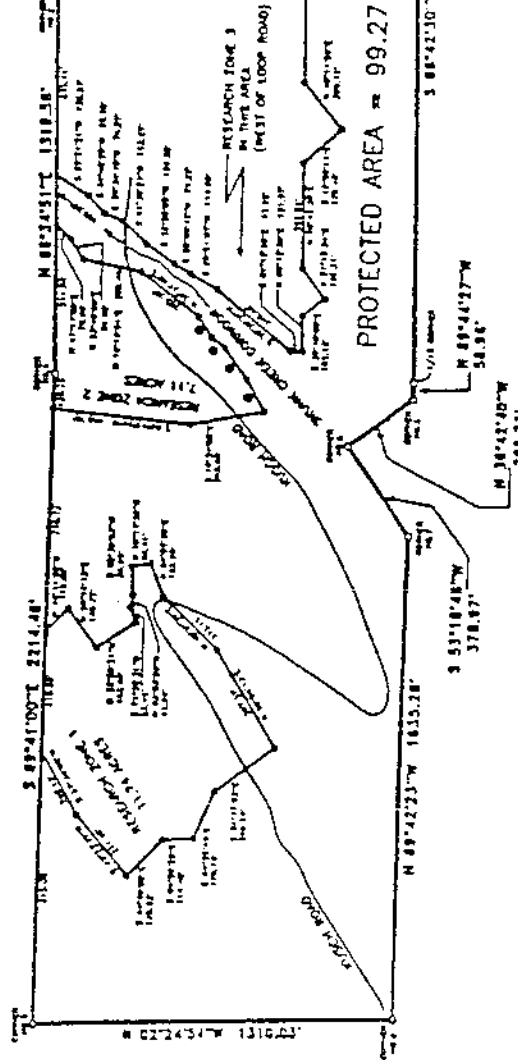


BROADWAY - STATE HIGHWAY NO. 95

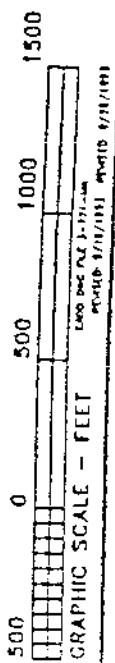
DEVELOPMENT ZONE - 87.34 ACRES
(EXCLUDING RESEARCH ZONE 3)

PROPOSED LOCATION OF
THE BLDG. BUILDING

PROTECTED AREA = 99.27 ACRES



- BOUNDARY LINE
- RESEARCH ZONE
- DEVELOPMENT ZONE
- PROPOSED BUILDING



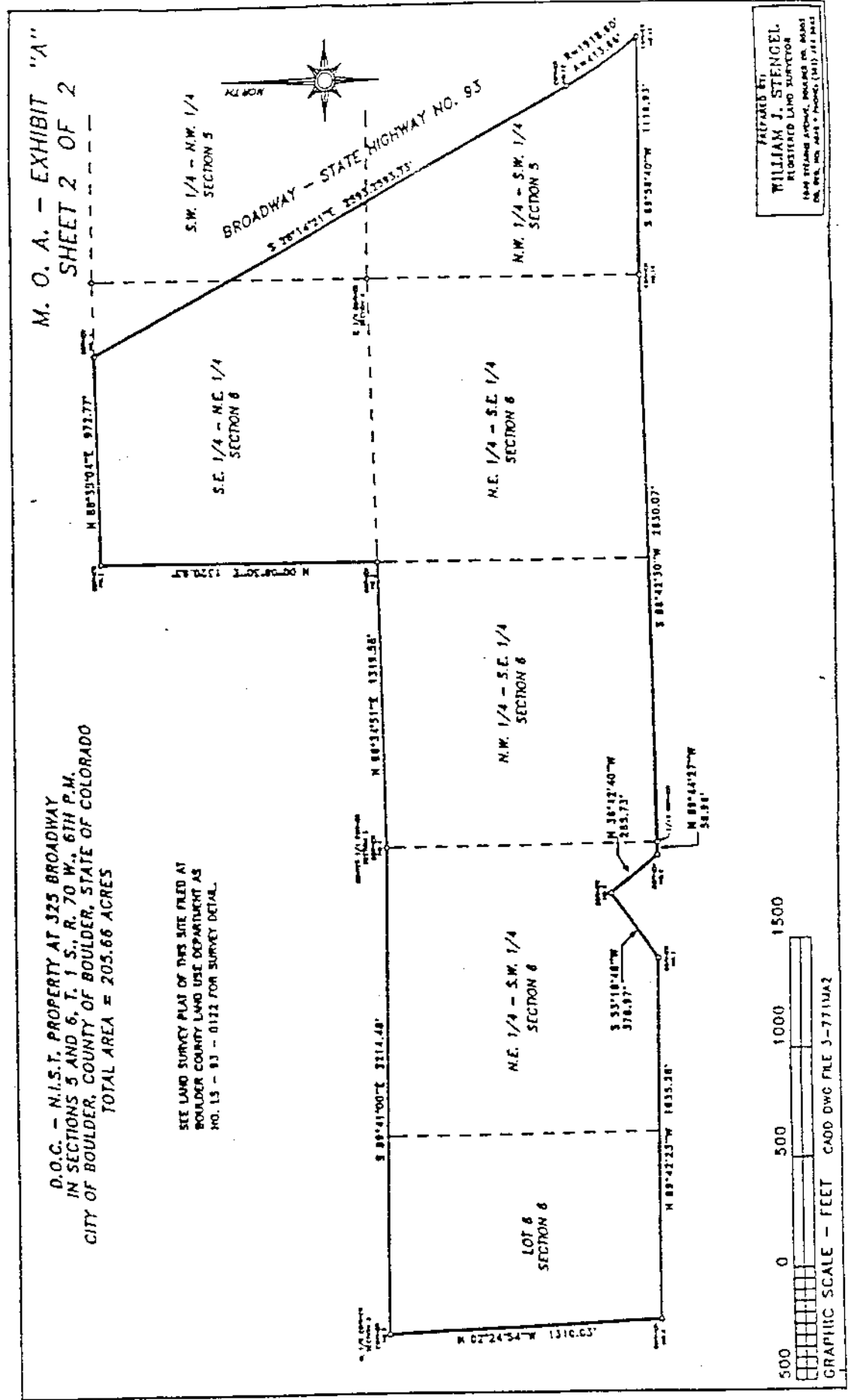
SEE LAND SURVEY PLAT OF THIS SITE FILED AT
BOULDER COUNTY LAND USE DEPARTMENT AS
NO. 15 - 83 - 0122 FOR SURVEY DETAIL

PREPARED BY
WILLIAM J. STENGEL
REGISTERED LAND SURVEYOR
1540 WILLIAM AVENUE, BOULDER CO. 80502
CIVIL ENGINEER NO. 10001 (1983) AND 10015 (1984)

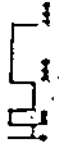
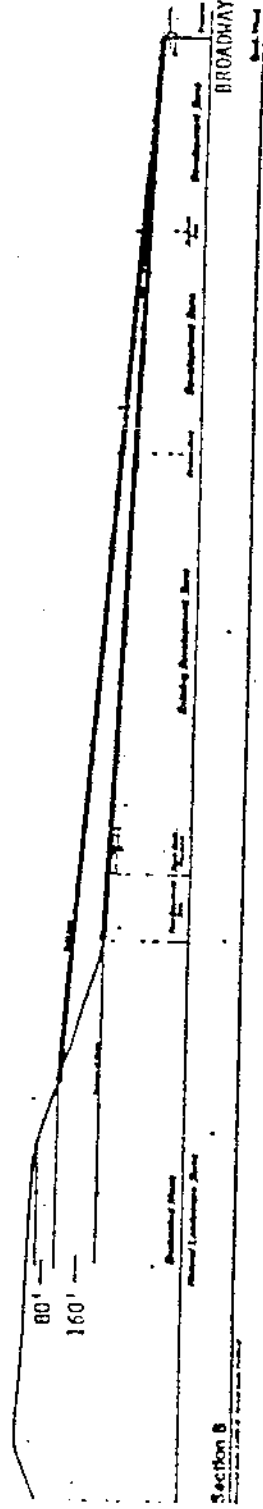
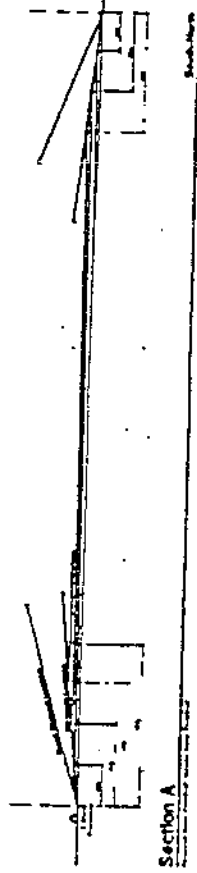
M. O. A. - EXHIBIT "A"
SHEET 2 OF 2

D.O.C. - N.I.S.T. PROPERTY AT 325 BROADWAY
IN SECTIONS 5 AND 6, T. 1 S., R. 70 W., 6TH P.M.
CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO
TOTAL AREA = 205.66 ACRES

SEE LAND SURVEY PLAT OF THIS SITE FILED AT
BOULDER COUNTY LAND USE DEPARTMENT AS
NO. 15 - 93 - 0122 FOR SURVEY DETAIL.



H.O.A. EXHIBIT "B"



SITE SECTIONS

NIST • Boulder

DESCRIPTION OF PEDESTRIAN AND BICYCLE PATHS EASEMENT:

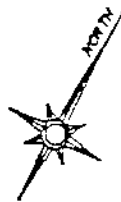
THIS DESCRIPTION IS BASED UPON A MONUMENTED LAND SURVEY OF THE N.I.S.T. SITE FILED AT BOULDER COUNTY LAND USE DEPARTMENT AS NUMBER LS-93-0122. CORNER DESCRIPTIONS AND MONUMENTATION ARE DESCRIBED THEREON.

A PART OF THE N.I.S.T. SITE LOCATED IN SECTIONS 5 AND 6, TOWNSHIP 1 SOUTH, RANGE 70 WEST, 6TH P.M., BOULDER COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT CORNER NO. 1, OF THE N.I.S.T. SITE, THE N.E. CORNER OF THE N.I.S.T. SITE; THENCE S.88°35.04'W., ALONG THE EXTERIOR BOUNDARY OF THE N.I.S.T. SITE, 26.06'; THENCE S.25°12'35"E., 30.52'; THENCE S.27°18'26"E., 201.20'; THENCE S.28°24'39"E., 234.61'; THENCE S.18°34'24"E., 105.64'; THENCE S.28°21'18"E., 308.64'; THENCE S.24°37'45"E., 170.41'; THENCE S.28°21'04"E., 375.84' TO A POINT ON THE BOUNDARY OF THE PREVIOUSLY DESCRIBED PROTECTED AREA; THENCE N.61°45'39"E., ALONG SAID PROTECTED AREA BOUNDARY, 64.55' TO A POINT ON THE EXTERIOR BOUNDARY OF THE N.I.S.T. SITE; (THE WESTERLY RIGHT-OF-WAY LINE OF BROADWAY); THENCE N.28°14'21"W., ALONG SAID EXTERIOR BOUNDARY, 1413.28' TO THE POINT OF BEGINNING, CONTAINING 1.36 ACRES, MORE OR LESS. (58211 SQUARE FEET)

M. O. A. EXHIBIT "C"

PAGE 2 of 2

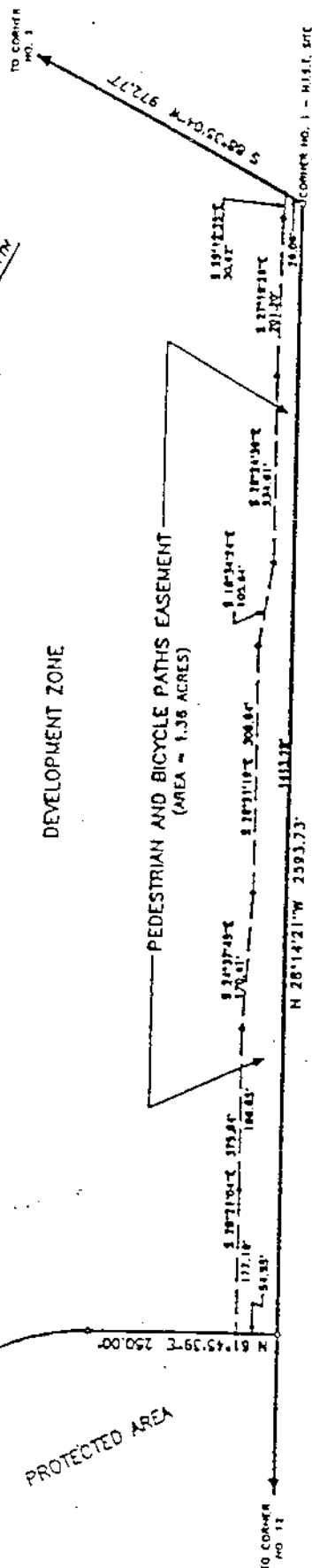


DEVELOPMENT ZONE

PEDESTRIAN AND BICYCLE PATHS EASEMENT
(AREA = 1.38 ACRES)

BROADWAY - STATE HIGHWAY NO. 93

PROTECTED AREA



SEE LAND SURVEY PLAT OF THIS SITE FILED AT
BOULDER COUNTY LAND USE DEPARTMENT AS
NO. LS - 93 - 0122 FOR SURVEY DETAIL.

PREPARED BY
WILLIAM J. STENGEL
REGISTERED LAND SURVEYOR
1824 ATLANTIC AVENUE, BOULDER CO, 80501
303.440.1000 • FAX 303.440.1001 • WWW.WJSURV.COM

GRANT OF IRREVOCABLE EASEMENT IN REAL PROPERTY

THIS IRREVOCABLE EASEMENT, made and entered into this 8th day of December, 1993, by and between the United States of America, acting by and through the Department of Commerce, National Institute of Standards and Technology ("NIST"), and the City of Boulder (the "City"),

WITNESSETH:

WHEREAS, the United States of America is the owner in fee simple of a parcel of land situate at 325 Broadway, Boulder, Colorado, described in Exhibit A, attached hereto and incorporated herein by this reference (the "property"), which parcel of land was acquired by the United States of America by deeds which are recorded among the land records of Boulder County, Colorado, located in Boulder, Colorado; and

WHEREAS, NIST, is the custodian of the property; and

WHEREAS, the City has requested the conveyance to it of an easement because of its desire to maintain a buffer zone, consisting of undeveloped space now in existence on the property, as well as providing continuing public access for the aesthetic, scenic, and environmental enjoyment of the present undeveloped space; and

WHEREAS, NIST recognizes those interests and desires to fully accommodate those interests in view of its present and future Federal scientific research needs; and

WHEREAS, the parties intend to preserve a protected area on the property as open space, for aesthetic, scenic, ecological, wildlife, and passive recreation purposes; and

WHEREAS, the parties intend to limit the use of the research zones on the property to preserve some of the same values; and

WHEREAS, the parties intend that certain transportation improvements be constructed by the City with its own funds; and

WHEREAS, the parties have entered into a memorandum of agreement of even date concerning the property; and

WHEREAS, NIST possesses the statutory authority to grant this easement to the City pursuant to Title IV of Public Law 102 - 393 (October 6, 1992), 106 Stat. 1745; and that the City possesses the authority to acquire such an easement over real property pursuant to Article XX, Section 6 of the Constitution of the State of Colorado, and Sections 64 and 176 of the Charter of the City;

WHEREAS, NIST specifically does not intend to create a conservation easement under Article 30.5 of Title 38 of the Colorado Revised Statutes;

THEREFORE, for good and valuable consideration, pursuant to the above-mentioned authorities, NIST hereby grants and conveys to the City this irrevocable easement, subject to the terms and conditions described below:

Description of the Conveyed Property

1. The Protected Area. The protected area which is the subject of this easement is described in Exhibit B, attached hereto and incorporated herein by this reference. As a general description, this area consists of the undeveloped lands: on the south of the property, an area generally 400 feet wide, lying between Dartmouth and the irregular boundary formed by Research Zone 3, Building 25, and the loop road to be constructed (as described below); on the east of the property, an area approximately 600 feet wide, lying between Broadway and the same loop road described below; and on the west of the property, the area west of the loop road described below, constituting the Enchanted Mesa, minus the three defined primary research zones. The protected area shall include the Skunk Creek Corridor, as defined by the U.S. Fish and Wildlife Service. The loop road will be in the following general location: on the south and east as close to the Anderson Ditch as possible; connecting with the Broadway access; and around the south end of the NOAA Building as close to the building as possible (giving reasonable consideration to noise and vibrations), maintaining the general 400-foot wide buffer in all areas except the south end of the NOAA building. A legal description of the protected area is attached hereto as Exhibit C and incorporated herein by this reference. Both parties intend that the legal and general descriptions and the map describe the identical parcel of property, but the legal description is more precise and governs in case of conflict.

2. The Secondary Research Zone. Within the protected area is a secondary research zone, described as such on Exhibit B. Research may be conducted within this zone only in accordance with the procedures described in paragraph 13 of this easement.

3. The Detention Ponds. Within the protected area two detention ponds may be built, to regulate precipitation run-off. These ponds will both generally lie along Broadway.

4. Kusch Road. Within the protected area is a currently unimproved road known as Kusch Road, as described on Exhibit B. This road serves as the only means of connecting the parts of the property not conveyed by this easement which lie within the protected area.

Terms of the Easement

5. Use of the Protected Area - General. The protected area shall be used as an undeveloped buffer between the Federal facilities on the property and the surrounding community. Consistent with this use, the parties agree that the protected area shall be preserved in its natural, open space condition, and all efforts shall be expended toward preserving the full wildlife, riparian, and wetland conditions now existing. The protected area

shall be open to public access and use at all times, except when and to the extent that use is reasonably restricted by NIST and the City Manager to protect the public safety, ecology or wildlife or permit maintenance activities.

6. Use of the Protected Area by the City. Consistent with the use specified in paragraph 5 above, the City may, at its expense, construct a bicycle path and pedestrian paths in the protected area. The City shall maintain the improvements and the protected area to reasonable standards of repair, orderliness, neatness, sanitation, and safety. The City may also provide for regular law enforcement patrols to this area to ensure the public's adherence to local ordinances and laws (e.g., speeding cyclists, unleashed dogs, littering). But none of these contractual commitments shall give rise to a duty of care or waive, abrogate or impair the governmental immunity of the City. The City shall confine its activities in the protected area strictly to those necessary for the enjoyment of the privileges hereby granted, and shall refrain from marring or impairing the appearance of the property, obstructing access thereto, interfering with the transaction of NIST business and the convenience of the public, jeopardizing the safety of persons or property, or causing justifiable public criticism.

7. No Use of Protected Area Except as a Buffer. Except as otherwise provided by the Special Conditions of this easement, no use of the protected area that is inconsistent with the above-stated use of the protected area as an undeveloped buffer shall be permitted.

8. Specific Limitations on Use of the Protected Area. No person shall use the protected area in the following manner:

a. Except as otherwise provided by the Special Conditions of this easement, no person shall permit or place, construct or maintain any temporary or permanent structure or equipment of any kind, whether mobile or stationary, on the protected area.

b. Except as otherwise provided by the Special Conditions of this easement, no person shall permit or carry on any activities which impair the natural beauty or the ecological and wildlife values of the protected area.

c. Except as otherwise provided by the Special Conditions of this easement, no person shall permit or engage in any use in the protected area which includes scientific research, storage of scientific or support equipment, storage or use of mobile or manufactured homes or other temporary structures, a junk yard, a vehicle or vehicle replacement parts storage area, a parking lot, an animal or vehicle track, a golf course, a helicopter or airplane landing area, or a sign or billboard (except for directional signs placed by the City).

d. Except as otherwise provided by the Special Conditions of this easement, no person shall dump or store, or permit any dumping or storage of, ash, trash,

junk, rubbish, sawdust, garbage, chemicals, hazardous materials, or any other unsightly or offensive material on the protected area.

e. Except as otherwise provided by the Special Conditions of this easement, no person shall change, or permit any change in, the topography of the protected area through grading, excavation, dredging, filling, or placing soil or other substances, materials, or landfill on the protected area.

f. Except as otherwise provided by the Special Conditions of this easement, no person shall dig, remove, destroy, or cut, or permit the digging, removal, destruction, or cutting of, trees or plants, or any other destruction of the natural environment of the protected area.

g. Except as otherwise provided by the Special Conditions of this easement, no person shall poison, hunt, trap, or destroy, or permit the poisoning, hunting, trapping, or destruction of, animals on the protected area.

h. Except as otherwise provided by the Special Conditions of this easement, no person shall operate any type of motorized vehicle, including without limitation dirt bikes, motorcycles, or snowmobiles, on the protected area, except on Kusch Road. No person shall operate a motorized vehicle on Kusch Road except with the prior written consent of the Director, NIST. This paragraph shall not apply to authorized emergency, maintenance, or patrol vehicles.

i. Except as otherwise provided by the Special Conditions of this easement, no new roads shall be constructed in the protected area, and no road shall be constructed through the protected area connecting the property with the adjoining parcel of land currently occupied by the National Center for Atmospheric Research. Existing roads or tracks existing or created under this easement other than Kusch Road may be removed and the land restored to a natural condition.

j. Except as otherwise provided by the Special Conditions of this easement, no new perimeter or interior fencing shall be constructed on or around the protected area. Existing fencing may be repaired by either party.

Special Conditions of the Easement

9. Reservation of Prior Easements. NIST reserves the right to use and maintain any facilities which exist in the protected area in accordance with all current, existing easements and other conveyances. Should it become necessary for NIST or another party to those easements to dig or alter the land in the protected area for such purpose, NIST shall provide prior written notice to the City of the planned activities and the reasons therefor, which may include without limitation necessary maintenance, upgrading of facilities, or emergency repairs. NIST shall assure that the protected area is restored to its original

contour and revegetated within a reasonable time after any disturbance under this paragraph.

10. Reservation of Mineral Rights. No mining operation shall be conducted or permitted by the City on the protected area. No minerals shall be removed therefrom except such as are reasonably necessary incident to the utilization of the protected area for the purposes for which this easement is granted.

11. Reservation of Utility and Communications Lines. NIST reserves the right for itself and any other agency to erect new permanent utility and communications lines under the protected area. Before any such placement of utility lines, NIST shall provide prior written notice to the City that a programmatic scientific need necessitates the construction of a particular utility or communications line under the protected area. Both parties agree to accommodate each other's interests to the maximum extent possible in constructing these lines. NIST shall assure that the protected area is restored to its original contour and revegetated within a reasonable time after any disturbance under this paragraph.

12. Construction of Berms. NIST reserves the right for itself and any other agency constructing any permanent buildings adjacent to the protected area to use a reasonable amount of land in the protected area for berming or other landscaping activities directly associated with the particular construction project. Such activities shall use only as much of the protected area as required to perform the activity.

13. Reservation of Activities in the Secondary Research Zone. NIST reserves the right to conduct research in the secondary research zone. Within the secondary research zone, research activities may only be performed if (1) the Director, NIST, certifies that a programmatic scientific need exists that research be done in the zone, and the research cannot be done elsewhere on the property; (2) no building or antenna or satellite dish is erected; and (3) such research is temporary in nature. Before a decision is made to undertake research in the secondary research zone, the Director, NIST, in consultation with other Federal agencies when appropriate, shall communicate his or her intentions to make such a decision to individuals within the City and community. Those individuals shall be allowed reasonable time to study the proposal and to provide their individual views. NIST shall give prior notice to the City and public of its intent to conduct research in the secondary research zone. Upon termination of the research project, the secondary research zone shall revert to its primary use as a buffer.

14. Fencing of the Secondary Research Zone. The secondary research zone shall be open to public access and use at all times, and no fences shall be placed or maintained, except as are essential to the protection of equipment during the period that the equipment remains on the zone. The secondary research zone shall be maintained as an open space buffer when and to the extent that equipment is not located on it.

COPY

MEMORANDUM OF AGREEMENT

Between

THE U.S. DEPARTMENT OF COMMERCE
THE U.S. GENERAL SERVICES ADMINISTRATION

And

THE SOUTHERN UTE
THE UTE MOUNTAIN UTE
THE NORTHERN UTE
THE JICARILLA APACHE
THE APACHE OF OKLAHOMA
THE KIOWA OF OKLAHOMA
THE COMANCHE OF OKLAHOMA
THE CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA
THE PAWNEE OF OKLAHOMA
THE EASTERN SHOSHONE
THE NORTHERN ARAPAHO
THE NORTHERN CHEYENNE
THE OGLALA SIOUX
THE ROSEBUD SIOUX
THE MEDICINE WHEEL COALITION FOR SACRED SITES
of NORTH AMERICA

Regarding

THE DEPARTMENT OF COMMERCE CAMPUS
BOULDER, COLORADO

This MEMORANDUM OF AGREEMENT (MOA) made and entered into by and between the Southern Ute, Ute Mountain Ute, Northern Ute, Jicarilla Apache, Apache of Oklahoma, Kiowa of Oklahoma, Comanche of Oklahoma, Cheyenne and Arapaho Tribes of Oklahoma, Pawnee of Oklahoma, Eastern Shoshone, Northern Arapaho, Northern Cheyenne, Oglala Sioux, and Rosebud Sioux (the Tribes), The Medicine Wheel Coalition for Sacred Sites of North America (the Coalition), the Department of Commerce (DOC), and the General Services Administration (GSA), under the spirit and provisions of the following:

WHEREAS, Public Law 89-665 (the National Historic Preservation Act of 1966, as amended) and regulations implementing Section 106 (36 CFR 800) and Section 110, require Federal agencies to identify natural, cultural, historical and archaeological resources which may be impacted by Federal undertakings, to consider the effect of the proposed action upon the resources, and to consult with interested parties on the effect of proposed undertakings; and,

WHEREAS, the United States Government has a trust relationship with American Indian Tribes, as evidenced by provisions in numerous laws such as the National Historic Preservation Act of 1966, the American Indian Religious Freedom Act (AIRFA), the Native American Graves Protection and Repatriation Act (NAGPRA), the Archaeological Resources Protection Act (ARPA) and [reaffirmed in] President Clinton's Memorandum for Heads of Executive Departments and Agencies of April 1994, GSA and the DOC recognize the need to consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect these native governments or their members; and,

WHEREAS, the DOC and GSA in consideration of the trust responsibilities between the U.S. Government and American Indian Tribes, are committed to supporting the policy of Public Law 95-341 (the American Indian Religious Freedom Act of 1978), which states that "...it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express and exercise the traditional religions of the American Indian, including, but not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites"; and,

WHEREAS, the Tribes have reserved rights and interests for lands off-reservation including, but not limited to, lands ceded to the United States of America by treaties; and,

WHEREAS the Tribes recognize that cultural and natural resources, and customary use locations on Federal lands, are invaluable in the preservation of endangered tribal resources critical to the preservation of their cultural heritage and pursuit of traditional lifeways for present and future generations; and,

WHEREAS, to promote and support government-to-government relationships with the Tribes as defined and required by the President's Executive Memorandum of April 1994, GSA and the DOC (with assistance from the Army Corps of Engineers) have attempted, through consultation, to co-partner with the Tribes and the Coalition to address and find solutions for the cultural resource issues on the Department of Commerce Campus (DOC Campus); and,

WHEREAS, the DOC and GSA wish to establish and maintain government-to-government relationships with tribal governments for the purpose of building stable, long-term working relationships which result in positive, mutually understood and beneficial solutions to common situations; and,

WHEREAS, this MOA reflects the results [agreements] of a consultation process begun by the DOC and GSA in March, 1994, with 14 Federally recognized Indian tribes (the Tribes) native to Colorado, and the Medicine Wheel Coalition of Sacred Sites of North America (the Coalition) in response to allegations that one, or several, rock features on a portion of the DOC Campus, 325 Broadway, east of the Anderson irrigation ditch, were of American Indian origin; and,

WHEREAS, the DOC and GSA have hosted three inter-tribal consultation conferences with the parties on October 4-6, 1994; March 1-3, 1995; and, May 7-11, 1995, for the purposes of inspection of the DOC Campus, providing a forum for discussion of the issue(s), and providing an opportunity for ceremonial activities; and,

WHEREAS, the GSA and the Army Corps of Engineers have visited individually with each Tribe and the Coalition; and,

WHEREAS, the DOC and GSA are committed to addressing concerns identified by tribal governments regarding natural and cultural resource issues within DOC and GSA areas of responsibility, and to outline steps necessary and desired in resolving issues; and,

WHEREAS, as a result of the consultations in accordance with Section 101 (d)(6)(B) of the National Historic Preservation Act (16 U.S.C. 470a), a majority of the Tribes and the Coalition identified portions of the DOC Campus as sacred and special, including an area between the Anderson irrigation ditch and Broadway and the top of Long Mesa; and,

WHEREAS, although the parties were not in agreement as to whether a cultural resource of American Indian origin exists on the DOC Campus, they did not support additional invasive studies needed to better identify the cultural property to make a recommendation about the eligibility of the area for inclusion in the National Register of Historic Places (NRHP), or the eligibility of the rock features as a Traditional Cultural Property (TCP). The Tribes and the Coalition agreed that, rather than permit additional archaeological studies, the areas designated by the Tribes and the Coalition (see attachment 1 for

definition) would be considered special and sacred under the provisions and criteria of the American Indian Religious Freedom Act (AIRFA) of 1978; and,

WHEREAS, the DOC and GSA support use of the DOC Campus by American Indians, and will develop a Programmatic Agreements (PA) with all parties, which will provide guidance for the use and access of the protected area; and,

WHEREAS, it is mutually advantageous for all parties to cooperate in this opportunity to increase the knowledge and understanding of the historical significance of the American Indian people, and their resources, in the Boulder area; and,

NOW THEREFORE, be it resolved that, the DOC, GSA, the Tribes, and the Coalition agree that the protected property at 325 Broadway, Boulder, CO shall be administered in accordance with the following stipulations:

CONDITIONS

The DOC and GSA will ensure the following conditions are carried out:

1. Construction of the proposed building on the west side of the Anderson Irrigation Ditch can proceed provided that this MOA, and the subsequent Programmatic Agreement (PA), as hereinafter described, are developed cooperatively with the Tribes, the Coalition (or their designated representatives) and finalized.
2. The MOA will be part of the Environmental Impact Statement (DEIS), currently being prepared by GSA, and that based on this MOA, a PA will be prepared and be made part of the Final Record of Decision of the EIS. In the event the PA is not finalized within this time frame, it will become part of the Final Record of Decision by addendum.
3. A PA will be developed between the Tribes (or their designated representative), the Coalition, the DOC, the GSA, and the City of Boulder to specifically define the use and care of the above mentioned protected areas.
4. The Tribes and the Coalition will hold a permanent, irrevocable easement on the property to protect against future development. The land areas covered by this easement are referenced on the official survey map, Attachment 1 hereto. This easement will be drawn up in cooperation with the City of Boulder and upon final formulation will become part of this Agreement by addendum.
5. Those areas east of the Anderson Irrigation Ditch and the area on Long Mesa as described in Attachment 1, will remain undisturbed with the following one-time exceptions: (a) a trench for a sewer line as indicated on Attachment 2 hereto; and, (b) a trench and hollowed out area for a storm water detention pond consisting of about one and one-half acres as indicated on Attachment 2 hereto.

14. The parties recognize the logistical difficulty in obtaining simultaneous signatures to this MOA. Therefore, the parties agree that this MOA will take effect upon the signature of the DOC, GSA and a majority of the consulting tribes, but its provisions will not affect any other party until that party signs the MOA. However, in no case shall this agreement take effect before January 1, 1996.

U.S. General Services Administration

By: 

Administrator

DEC 15 1995

Date: _____

U.S. Department of Commerce

By: _____

Secretary

Date: _____

The Medicine Wheel Coalition for Sacred Sites
of North America

By: _____

President

Date: _____

The Southern Ute

By: _____

Date: _____

The Ute Mountain Ute

By: _____

Date: _____

The Northern Ute

By: _____

Date: _____

The Jicarilla Apache

By: _____

Date: _____

The Apache of Oklahoma

By: _____

Date: _____

The Kiowa of Oklahoma

By: _____

Date: _____

The Comanche of Oklahoma

By: _____

Date: _____

6. Subsequent to the one-time exceptions as noted above, the disturbed areas will be restored to their previous condition, as reasonably possible. After the installation described in paragraph 5, it is understood by and between the parties hereto that certain maintenance activities may be required from time to time relative to the aforementioned sewer line and retention pond. The procedure for notification of these activities will be addressed in the PA.

7. The proposed Loop Road entrance to the National Oceanographic & Atmospheric Administration (NOAA) building originally designed to pass east of the Anderson irrigation ditch will be eliminated. Entrance to the NOAA building will use the existing road structures, to include a modernized and widened Lawrence Road.

8. A monitoring program will be established to ensure tribal oversight during ground disturbing activities on the DOC campus. Activities encompassed by this program include but are not limited to: ground disturbing construction activity for the NOAA and NIST buildings; two utility trenches for sewer and a storm water detention pond; and any additional construction disturbance necessary west of the Anderson irrigation ditch. The procedures for implementation of this program will be specifically defined in the PA.

9. Prior to construction, specific procedures will be developed for implementing the discovery, consultation, and repatriation provisions of Public Law 101-601 (Native American Graves Protection and Repatriation Act of 1990). These procedures will be defined in the PA. American Indian artifacts discovered during ground disturbing activities will be treated in accordance with these procedures.

10. The DOC (either in the NIST or NOAA building) will provide an office and the necessary support for use by the tribal monitoring personnel during ground disturbing activities as described in number 9 above. The PA will address this facility in detail.

11. Direct contacts between the DOC and GSA, the Tribes and the Coalition are in no way limited by this MOA. Such contacts are encouraged to promote more effective communication and coordination. This MOA in no way supersedes other policies, authorities, treaties, or jurisdictions of the DOC and GSA, the Tribes and the Coalition.

12. Should a dispute or objection arise between the parties regarding any aspect of this MOA, the parties agree to consult with each other in good faith to resolve the dispute or objection. If the dispute or objection cannot be resolved, the parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. All parties agree not to seek judicial relief to resolve the dispute or objection, or to otherwise sue to enforce its rights under this MOA, until the consultation and mediation attempts have been exhausted.

13. Amendments, supplements or revisions to this MOA may be proposed by the DOC, GSA, Tribes or the Coalition, and shall become effective upon formal approval of the signatories.

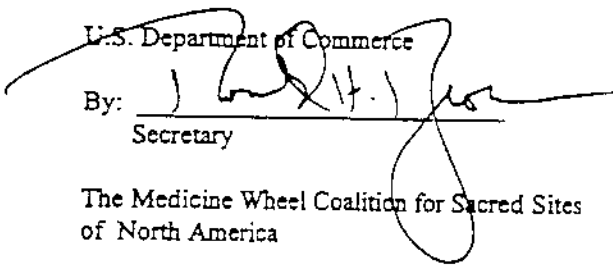
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U.S. General Services Administration

By: _____
Administrator

Date: _____

U.S. Department of Commerce

By:  _____
Secretary

Date: 12/20/95

The Medicine Wheel Coalition for Sacred Sites
of North America

By: _____
President

Date: _____

The Southern Ute

By: _____

Date: _____

The Ute Mountain Ute

By: _____

Date: _____

The Northern Ute

By: _____

Date: _____

The Jicarilla Apache

By: _____

Date: _____

The Apache of Oklahoma

By: _____

Date: _____

The Kiowa of Oklahoma

By: _____

Date: _____

The Comanche of Oklahoma

By: _____

Date: _____

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U.S. General Services Administration

By: _____
Administrator

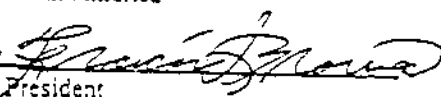
Date: _____

U.S. Department of Commerce

By: _____
Secretary

Date: _____

The Medicine Wheel Coalition for Sacred Sites
of North America

By: 
President

Date: 12-5-95

The Southern Ute

By: _____

Date: _____

The Ute Mountain Ute

By: _____

Date: _____

The Northern Ute

By: _____

Date: _____

The Jicarilla Apache

By: _____

Date: _____

The Apache of Oklahoma

By: _____

Date: _____

The Kiowa of Oklahoma

By: _____

Date: _____

The Comanche of Oklahoma

By: _____

Date: _____

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U.S. General Services Administration

By: _____
Administrator

Date: _____

U.S. Department of Commerce

By: _____
Secretary

Date: _____

The Medicine Wheel Coalition for Sacred Sites
of North America

By: _____
President

Date: _____

The Southern Ute

By: Willa R. Hartsley, Vice Chairman Date: April 17, 1996

The Ute Mountain Ute

By: _____

Date: _____

The Northern Ute

By: _____

Date: _____

The Jicarilla Apache

By: _____

Date: _____

The Apache of Oklahoma

By: _____

Date: _____

The Kiowa of Oklahoma

By: _____

Date: _____

The Comanche of Oklahoma

By: _____

Date: _____

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U.S. General Services Administration

By: _____
Administrator

Date: _____

U.S. Department of Commerce

By: _____
Secretary

Date: _____

The Medicine Wheel Coalition for Sacred Sites
of North America

By: _____
President

Date: _____

The Southern Ute

By: _____

Date: _____

The Ute Mountain Ute

By: *Judy Kungler*

Date: *9/12/96*

The Northern Ute

By: _____

Date: _____

The Jicarilla Apache

By: _____

Date: _____

The Apache of Oklahoma

By: _____

Date: _____

The Kiowa of Oklahoma

By: _____

Date: _____

The Comanche of Oklahoma

By: _____

Date: _____

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U.S. General Services Administration

By: _____
Administrator

Date: _____

U.S. Department of Commerce

By: _____
Secretary

Date: _____

The Medicine Wheel Coalition for Sacred Sites
of North America

By: _____
President

Date: _____

The Southern Ute

By: _____

Date: _____

The Ute Mountain Ute

By: _____

Date: _____

The Northern Ute

By: _____

Date: _____

The Jicarilla Apache

By: _____

Date: _____

The Apache of Oklahoma

By: 

Date: 4-12-94

The Kiowa of Oklahoma

By: _____

Date: _____

The Comanche of Oklahoma

By: _____

Date: _____

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U.S. General Services Administration

By: _____
Administrator

Date: _____

U.S. Department of Commerce

By: _____
Secretary

Date: _____

The Medicine Wheel Coalition for Sacred Sites
of North America

By: _____
President

Date: _____

The Southern Ute

By: _____

Date: _____

The Ute Mountain Ute

By: _____

Date: _____

The Northern Ute

By: _____

Date: _____

The Jicarilla Apache

By: _____

Date: _____

The Apache of Oklahoma

By: _____

Date: _____

The Kiowa of Oklahoma

By: _____

Date: _____

The Comanche of Oklahoma

By: *William D. [Signature]*

Date: 3/4/96

The Cheyenne and Arapaho Tribes of Oklahoma

By: _____

Date: _____

The Pawnee of Oklahoma

By: _____

Date: _____

The Eastern Shoshone

By: _____

Date: _____

The Northern Arapaho

By: Rickal Deeney, Chairman

Date: 4-16-96

The Northern Cheyenne

By: _____

Date: _____

The Ogishia Sioux

By: _____

Date: _____

The Rosebud Sioux

By: _____

Date: _____

The Cheyenne and Arapaho of Oklahoma

By: _____

Date: _____

The Pawnee of Oklahoma

By: _____

Date: _____

The Eastern Shoshone

By: _____

Date: _____

The Northern Arapaho

By: _____

Date: _____

The Northern Cheyenne

By: *Stewart Fisher*
President

Date: *4-19-96*

The Ogala Sioux

By: _____

Date: _____

The Rosebud Sioux

By: _____

Date: _____

The Cheyenne and Arapaho Tribes of Oklahoma

By: Charles Savage

Date: 4-4-96

The Pawnee of Oklahoma

By: _____

Date: _____

The Eastern Shoshone

By: _____

Date: _____

The Northern Arapaho

By: _____

Date: _____

The Northern Cheyenne

By: _____

Date: _____

The Oglala Sioux

By: _____

Date: _____

The Rosebud Sioux

By: _____

Date: _____

The Cheyenne and Arapaho of Oklahoma

By: _____

Date: _____

The Pawnee of Oklahoma

By: *William H. Howell*
Head Chief - Northern Council

Date: *Feb 10, 1996*

The Eastern Shoshone

By: _____

Date: _____

The Northern Arapaho

By: _____

Date: _____

The Northern Cheyenne

By: _____

Date: _____

The Oglala Sioux

By: _____

Date: _____

The Rosebud Sioux

By: _____

Date: _____

The Cheyenne and Arapaho Tribes of Oklahoma

By: _____

Date: _____

The Pawnee of Oklahoma

By: _____

Date: _____

The Eastern Shoshone

By: _____

Date: _____

The Northern Arapaho

By: _____

Date: _____

The Northern Cheyenne

By: _____

Date: _____

The Oglala Sioux

By: Walter Peterson Elder

Date: 4-2-96

The Rosebud Sioux

By: _____

Date: _____

The Cheyenne and Arapaho of Oklahoma

By: _____

Date: _____

The Pawnee of Oklahoma

By: _____

Date: _____

The Eastern Shoshone

By: _____

Date: _____

The Northern Arapaho

By: _____

Date: _____

The Northern Cheyenne

By: _____

Date: _____

The Oglala Sioux

By: _____

Date: _____

The Rosebud Sioux

By: William F. Gindell

Date: 3-1-96

c. Intended for the City:

City Manager
Post Office Box 791
Boulder, Colorado 80306

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names
as of the date first above written.

U.S. Department of Commerce

By: Arati Prabhakar
Arati Prabhakar
Director, National Institute of Standards and Technology

Date: 8 December 1993

The City of Boulder, Colorado

By: Stephen T. Honey
Stephen T. Honey, City Manager

Attest:

[Signature]
Director of Finance and Record
Ex-Officio City Clerk

Approved as to form:

[Signature]
City Attorney

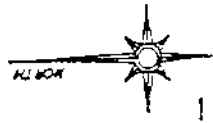
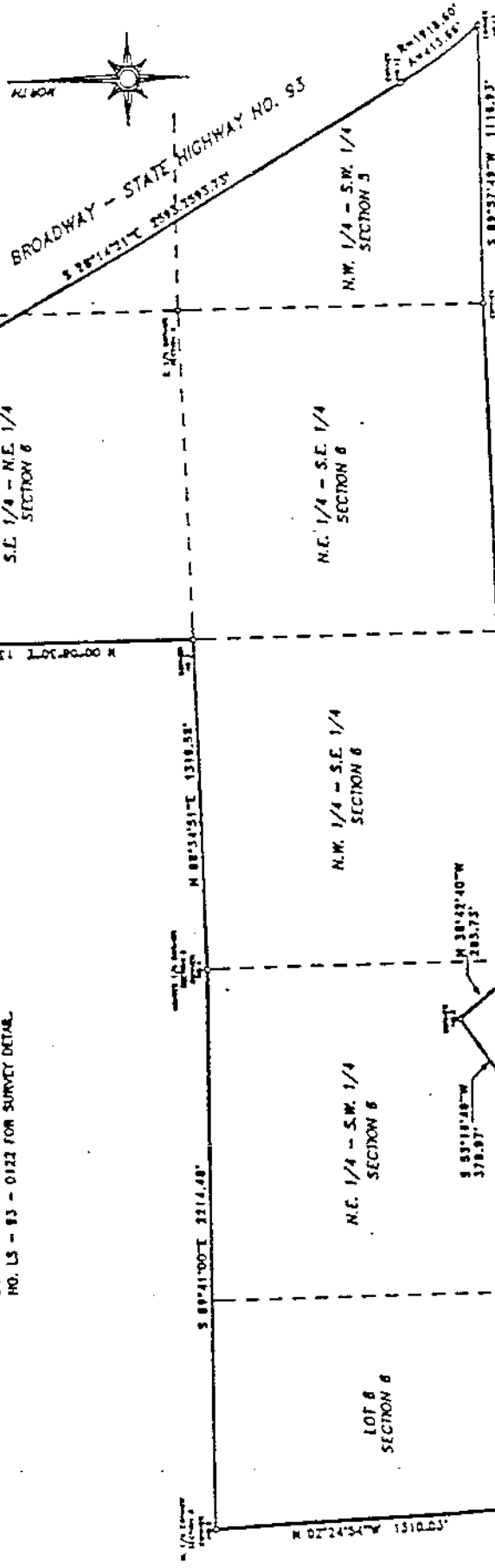
Date: 11/15/93

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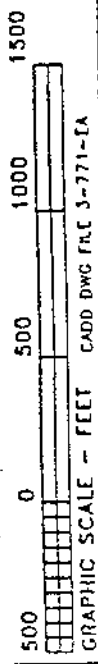
EASEMENT EXHIBIT "A"

D.O.C. - N.I.S.T. PROPERTY AT 325 BROADWAY
IN SECTIONS 5 AND 6, T. 1 S., R. 70 W., 6TH P.M.
CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO
TOTAL AREA = 203.66 ACRES

SEE LAND SURVEY PLAT OF THIS SITE FILED AT
BOULDER COUNTY LAND USE DEPARTMENT AS
NO. LS - 93 - 0122 FOR SURVEY DETAIL.



PREPARED BY:
WILLIAM J. STENGEL
REGISTERED LAND SURVEYOR
1505 STEADY AVENUE, BOULDER, CO. 80501
303-440-1000 • FAX 303-440-1011



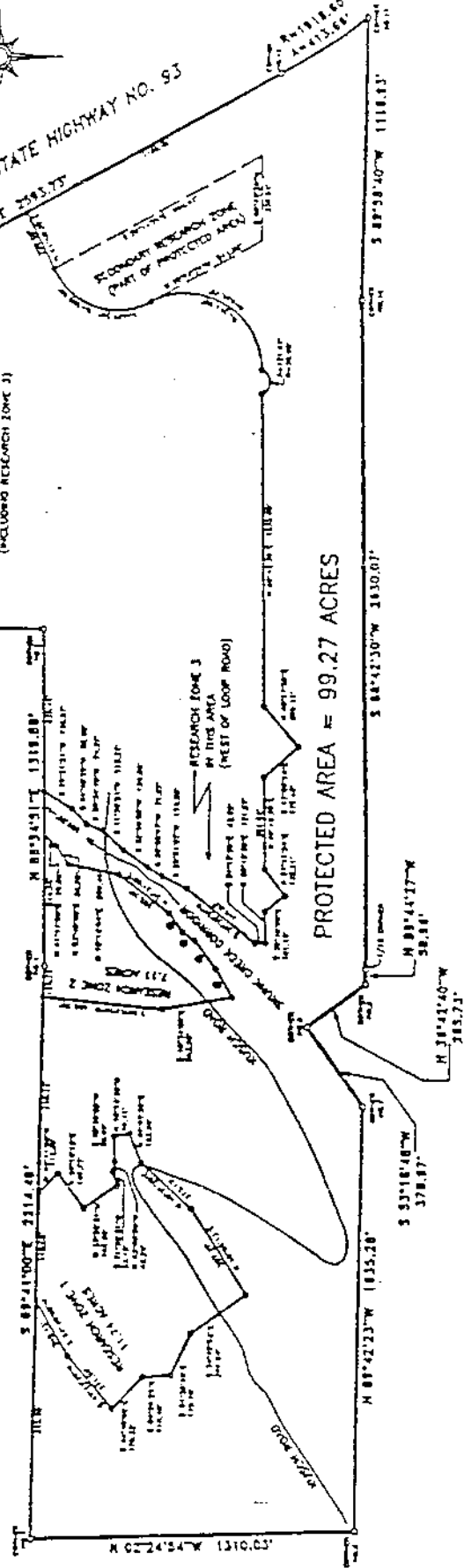
EASEMENT EXHIBIT "B"

D.O.C. - N.I.S.T. PROPERTY AT 325 BROADWAY
IN SECTIONS 5 AND 6, T. 1 S., R. 70 W., 6TH P.M.
CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO
TOTAL AREA = 205.66 ACRES

BROADWAY - STATE HIGHWAY NO. 93
S 28°10'17"E 2593.77'

DEVELOPMENT ZONE - 87.31 ACRES
(INCLUDING RESEARCH ZONE 3)

PROTECTED AREA = 99.27 ACRES



SEE LAND SURVEY PLAN OF THIS SITE FILED AT
BOULDER COUNTY LAND USE DEPARTMENT AS
NO. LS - 93 - 0122 FOR SURVEY DETAIL.

HUBBARD ST.
WILLIAM J. STENGEL
REGISTERED LAND SURVEYOR
1546 E. 10TH AVENUE, BOULDER, CO. 80501
PHONE: (303) 440-1171

• BOUNDARY LINE
• EASEMENT LINE
• RESEARCH ZONE
• PROTECTED AREA

GRAPHIC SCALE - FEET
0 500 1000 1500

COPIED FROM FILE 3-211-18
MONTH 1/19/91, PRINTED 1/19/91

EASEMENT EXHIBIT "C"

DESCRIPTION OF THE PROTECTED AREA:

THIS DESCRIPTION IS BASED UPON A MONUMENTED LAND SURVEY OF THE N.I.S.T. SITE FILED AT BOULDER COUNTY LAND USE DEPARTMENT AS NUMBER LS-93-0122. CORNER DESCRIPTIONS AND MONUMENTATION ARE DESCRIBED THEREON.

A PART OF THE N.I.S.T. SITE LOCATED IN SECTIONS 5 AND 6, TOWNSHIP 1 SOUTH, RANGE 70 WEST, 6TH P.M., BOULDER COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT CORNER NO. 5, OF THE N.I.S.T. SITE, THE WEST 1/4 CORNER OF SAID SECTION 6; THENCE S.89°41'00"E., ALONG THE EXTERIOR BOUNDARY OF THE N.I.S.T. SITE, 915.00'; THENCE S.57°36'09"W., 249.45'; THENCE S.47°23'29"W., 271.89'; THENCE S.44°10'02"E., 178.22'; THENCE S.04°26'25"E., 114.40'; THENCE S.64°25'45"E., 178.70'; THENCE S.34°47'52"E., 269.54'; THENCE N.55°06'13"E., 397.37'; THENCE N.40°31'29"E., 273.15'; THENCE N.66°02'39"E., 122.20'; THENCE N.10°14'35"W., 68.41'; THENCE S.85°39'03"W., 98.89'; THENCE N.83°03'20"W., 42.26'; THENCE S.71°36'31"W., 63.45'; THENCE N.33°50'31"W., 162.68'; THENCE N.50°16'13"E., 169.77'; THENCE N.44°41'00"W., 112.00' TO A POINT ON THE EXTERIOR BOUNDARY OF THE N.I.S.T. SITE; THENCE S.89°41'00"E., ALONG SAID EXTERIOR BOUNDARY, 768.73'; THENCE S.04°43'24"W., 496.70'; THENCE S.10°34'08"E., 283.50'; THENCE N.58°17'29"E., 128.79'; THENCE N.50°53'57"E., 139.32'; THENCE N.33°08'10"E., 60.17'; THENCE N.53°16'34"E., 88.92'; THENCE N.34°31'00"E., 263.39'; THENCE N.10°19'04"E., 209.46'; THENCE N.53°40'00"E., 86.00'; THENCE N.41°17'00"E., 70.00' TO A POINT ON THE EXTERIOR BOUNDARY OF THE N.I.S.T. SITE; THENCE N.88°34'51"E., ALONG SAID EXTERIOR BOUNDARY, 169.59'; THENCE S.29°21'21"W., 135.57'; THENCE S.44°48'29"W., 82.55'; THENCE S.20°34'19"W., 74.37'; THENCE S.41°36'24"W., 113.27'; THENCE S.32°28'05"W., 120.82'; THENCE S.28°08'47"W., 71.27'; THENCE S.25°51'07"W., 114.60'; THENCE S.36°30'34"W., 349.03'; THENCE S.01°17'30"E., 42.92'; THENCE N.88°42'30"E., 121.67'; THENCE S.38°40'00"E., 101.16'; THENCE N.51°15'34"E., 132.21'; THENCE N.88°42'30"E., 361.64'; THENCE S.42°06'14"E., 179.46'; THENCE N.48°11'59"E., 209.11'; THENCE N.88°42'30"E., 1235.85'; THENCE ALONG THE ARC OF A 50.00' RADIUS NON-TANGENT CURVE TO THE LEFT, 121.61' (CHORD BEARS N.88°40'13"E., 93.77'); THENCE ALONG THE ARC OF A 314.05' RADIUS CURVE TO THE LEFT, 634.78' (CHORD BEARS N.29°39'56"E., 532.11'); THENCE ALONG THE ARC OF A 300.00' RADIUS CURVE TO THE RIGHT, 471.24' (CHORD BEARS N.16°45'39"E., 424.26'); THENCE N.61°45'39"E., 250.00' TO A POINT ON THE EXTERIOR BOUNDARY OF THE N.I.S.T. SITE; THENCE ALONG SAID EXTERIOR BOUNDARY AS FOLLOWS: S.28°14'21"E., 1180.45' TO A POINT OF CURVE, CORNER NO. 12; ALONG THE ARC OF A 1818.60' RADIUS CURVE TO THE LEFT, 413.66' (CHORD BEARS S.34°28'46"E. 412.86'), TO CORNER NO. 11; S.89°58'40"W., 1116.93' TO CORNER NO. 10; S.88°42'30"W., 2630.07' TO THE S. 1/16 COR., N-S CENTERLINE OF SECTION 6; N.89°44'27"W., 58.96' TO CORNER NO. 9; N.36°42'40"W., 285.73' TO CORNER NO. 8; S.53°16'48"W., 378.97' TO CORNER NO. 7; N.89°42'23"W., 1635.28' TO CORNER NO. 6; AND N.02°24'54"W., 1310.03' TO CORNER NO. 5, THE POINT OF BEGINNING, CONTAINING 99.27 ACRES, MORE OR LESS. (4324327 SQUARE FEET)

Prepared by: William J. Stengel, Professional Land Surveyor
Colo. Reg. No. 4846 - 1049 Stearns Avenue - Boulder, Colorado 80303

Date: 9/18/93 - Revised 9/28/93

(the above name and address is included in accordance with Section 1, Article 35 of Title 38 C.R.S. 1982. It is a legal part of the description and should not be deleted)

15. Reservation of Activities Concerning Kusch Road. NIST reserves the right to use and maintain Kusch Road in a useable condition and to construct or improve the existing bridge over the Skunk Creek Corridor. Kusch Road and the bridge shall remain in their current state unless and until the Director, NIST, determines that for environmental or operational reasons, the road must be paved or the bridge must be improved. Upon making such a determination, the Director, NIST shall communicate such determination in writing to the City, which shall have the opportunity to respond to such determination and to offer input into the timing of the improvements, the construction techniques to be used, and the materials to be used.

16. Removal and Planting of Materials. After prior notice to NIST, the City may remove any unauthorized structures or materials and any noxious weeds or dead or diseased trees or shrubs. The parties may plant trees only with the prior written consent of each other. Any new plantings shall be confined to plants characteristic of and indigenous to this geographical area of the State of Colorado and endemic to the property.

17. Changes in Conditions. If at any time a party perceives the existence of a natural or man-made threat to the continued safety and use of the protected area, that party shall immediately inform the other, both orally and in writing, of that perceived threat. Upon mutual agreement, the parties may jointly or severally undertake any activity on the protected area to respond to such threat which would otherwise, under normal conditions, be deemed inconsistent with this easement.

Enforcement

18. Right of Entry. Both parties shall have the right to enter into and upon the protected area for the purposes of inspection and enforcement of any and all rights granted or retained by this easement and for the maintenance of the protected area consistent with the purposes of this easement.

19. Notification of Inconsistent Use. Should an inspection reveal a use of the protected area which is inconsistent with the uses contemplated and granted by this easement, the inspecting party shall immediately notify the other party in writing of the results of the inspection and the use which was considered to be inconsistent.

20. Response to Notification. Upon receipt of this written notice, the party alleged to be using the protected area in an inconsistent manner shall either (a) accept the findings of the other party and restore the property to its original condition as soon as reasonably possible or (b) provide a written explanation to the other party of the reasons why said use is not inconsistent with this easement.

21. Mediation. If the condition described in paragraph 20, subparagraph (b) above occurs, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at this meeting, both parties agree to meet with a mutually-acceptable mediator to attempt to resolve the dispute.

22. Delay of Enforcement. Both parties agree that neither party will sue to enforce its rights under this easement in court until all of the above procedures have been completed.

23. Enforcement. This easement imposes no duty or obligation to any third party. No person or entity not a signatory party to this easement shall have any right to enforce its terms. Both parties shall have the right to enforce this easement by proceedings at law or in equity. No party shall be deemed to waive or forfeit any right under this easement by its forbearance from enforcing such right in the past.

General Conditions

24. Term of Easement. The terms of this easement shall be binding on the parties and their respective agents, successors, and assigns, including without limitation all occupants of any portion of the property, and shall continue as a covenant and servitude running in perpetuity with the property.

25. Integration Clause. This easement and the attached exhibits plus the memorandum of agreement of even date contains the entire agreement between the parties relating to the property.

26. Modification. There shall be no variation or departure from the terms of this easement without the prior written consent of NIST and the City. This easement may be modified only by an instrument in writing executed by both parties.

27. Definition of Temporary. As used in this easement, the term "temporary" shall have a meaning of "not permanent." Because the duration of research projects may vary from time to time, whenever the Director, NIST, must communicate to the City that a project will be of a "temporary" nature, the Director shall inform the City of the approximate start and finish dates of the project. The project shall not exceed the finish date without an explanation to the City of the reason and communication of a new finish date.

28. Definition of Programmatic Scientific Needs. Any determination of NIST's "programmatic scientific needs" by the Director, NIST, shall be based on specific analysis by NIST project managers and consistent with the stated mission and legal authorities of NIST. For purposes of this easement, these needs include the needs of NOAA, the National Telecommunications and Information Administration, and any other Federal agencies on the site. Upon determination of a need, the Director, NIST, shall exercise reasonable diligence in seeking out alternatives that would have a less intrusive impact on the

surrounding community, including reviewing all of the available sites, determining that no other practical solution exists, and minimizing impact to the surrounding community.

29. Maps. The City shall provide NIST with a map of any bicycle and pedestrian paths constructed by it in the protected area.

30. Laws and Ordinances. In the exercise of any privileges granted by this easement, the City shall comply with all applicable State and municipal laws, and the rules, and regulations of Federal governmental departments and bureaus.

31. Damage. Except as may be otherwise provided by the Special Conditions set forth above, no NIST property shall be destroyed, displaced or damaged by the City in the exercise of the privileges granted by this easement concerning the protected area without the prior written consent of the Director, NIST.

32. Hold Harmless. The City hereby agrees to the extent of liability under the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as amended, to be responsible for any damages for negligence for which it shall be adjudicated liable in a final judgment by a court of competent jurisdiction. Nothing in this easement shall be construed to give rise to a duty of care or to waive, abrogate or impair the governmental immunity of the City. To the extent set forth in the prior two sentences, the City shall hold harmless NIST, its officers, agents and employees from:

(a) Any and all claims and demands which may be made against NIST, its officers, agents or employees by reason of any injury to, or death of, any person, or damage suffered or sustained by any person or corporation arising from the use of this easement; and

(b) Any and all damage to or destruction of the property of NIST occupied or used by the City.

33. Restoration. Upon express written abandonment of this easement by the City, the City shall restore the protected area, reasonable wear and tear excepted, and repair any damage caused by its use thereof. Except for pedestrian and bicycle paths, any property of the City installed or located in the protected area shall be removed. If the City fails to remove all such property within a reasonable period, it shall become the property of NIST, but this will not relieve the City of the liability for the cost of its removal and the restoration and repair of the protected area. NIST reserves the right to remove the City's property, restore and repair the protected area to a satisfactory condition, and hold the City liable for all costs if the City fails to remove said property and restore and repair the protected area as required by this paragraph.

34. Expense. Any cost or expense connected with, or in any manner incident to, the granting, exercise, enjoyment, or relinquishment of this easement shall be assumed and discharged by the City.

35. Attempted Variation. There shall be no variation or departure from the terms of this easement without prior written consent of the Director, NIST and the City Manager.

36. Transferability. This easement is not transferable. If the City, through any manner, shall cease to be the owner of any of the physical improvements situated in the protected area, this easement shall automatically terminate.

37. Nondiscrimination.

(a) The City agrees that no person shall be discriminated against in connection with the use made by the City of the protected area, on the grounds specified in Title VI of the Civil Rights Act of 1964 (~~78 Stat 3238, 253, codified at 42 U.S.C. § 2000d, et seq.~~ ~~(78 Stat 252, codified at 42 U.S.C. § 200d, et seq.)~~ and the applicable regulations of the U.S. Department of Commerce (15 C.F.R. Part 8).

(b) The City shall obtain from each person or firm who or which, through contractual or other arrangements (other than employment) with the City, provides services, benefits or performs work in the protected area, a written agreement whereby said person or firm agrees to assume the same obligations with respect to nondiscrimination as those imposed upon City as indicated above. The City shall furnish a copy of each such agreement to NIST.

38. Notices. All notices under this easement shall be given by registered or certified mail, postage prepaid, directed as follows, or as amended by notice given under this paragraph, and shall be deemed given on the date of mailing:

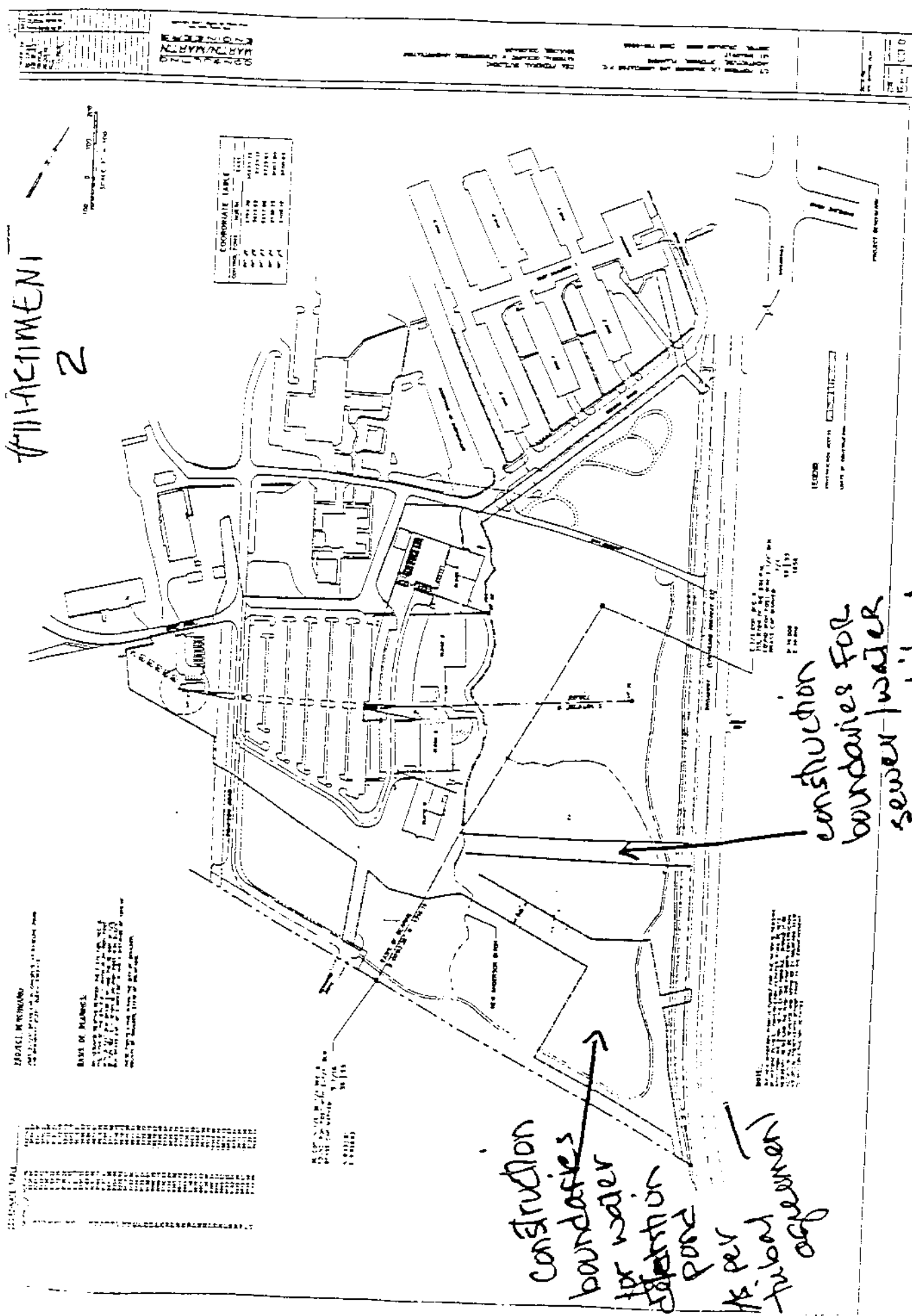
a. Intended for NIST:

Director, NIST Boulder Laboratories
325 Broadway
Boulder, Colorado 80303

b. Intended for NOAA:

Director, Field Installations Consolidation Project Office
325 Broadway OAX4
Boulder, Colorado 80303

Attachment 2



ELDORADO SPRINGS QUADRANGLE
COLORADO
7.5 MINUTE SERIES (TOPOGRAPHIC)

